

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)	CASE NO: 16-31928
)	CHAPTER 11
)	
ENERGY XXI, LTD, ET AL.,)	Houston, Texas
)	
)	Tuesday, August 23, 2016
Debtors.)	
<hr/>		(11:47 a.m. to 1:41 p.m.)

HEARING

BEFORE THE HONORABLE DAVID R. JONES,
UNITED STATES BANKRUPTCY JUDGE

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1 Houston, Texas; Tuesday, August 23, 2016; 11:47 a.m.

2 (Call to Order)

3 **THE CLERK:** All rise.

4 **THE COURT:** Thank you, everyone. Please be seated.
5 All right. Who's the keeper of all the info?

6 **MR. MEYER:** I guess that would start with me, your
7 Honor.

8 **THE COURT:** Fair enough.

9 **MR. MEYER:** David Meyer, Vinson and Elkins, on behalf
10 of the debtors. I'm here with my colleagues, Jessica Peet,
11 Jordan Leu, Reese O'Connor, Brad Foxman, with Matt Moran and
12 Harry Perrin.

13 **THE COURT:** Thank you, folks. Do you want to just
14 give me an update with where we are?

15 **MR. MEYER:** Sure. Why don't I do that.

16 Your Honor, first of all, thank you for your patience
17 as we've been working through a handful of issues over the
18 course of the last couple of hours and over the last couple of
19 days as well.

20 **THE COURT:** Yeah. Sure.

21 **MR. MEYER:** We have a handful of items on the agenda
22 today. The principal reason that we originally scheduled this
23 date was status conference with respect to plan confirmation,
24 so perhaps I'll start there. That necessarily dovetails with
25 the standing motions that were filed for today, first by the E

1 -- EPL Ad Hoc Group, then by the EGC Ad Hoc Group, and we have
2 two other items on the plan -- on the agenda today, for one,
3 the motion with respect to Prosperity and a contract objection
4 motion.

5 So, I'll start with the status conference, your
6 Honor. And thank you to your chambers, as well, for assisting
7 us work through dates and potential options here. Here is what
8 we -- where we currently sit, which is we would keep our dates
9 set for September 13th and 14th. We currently have those
10 established for plan confirmation.

11 **THE COURT:** Right.

12 **MR. MEYER:** Given where we currently are, as part of
13 the discovery process and just where this case sits
14 generally --

15 **THE COURT:** Uh-huh.

16 **MR. MEYER:** -- in the absence of a change, we
17 anticipate that we will need more than two days for
18 confirmation. And, so, as a consequence of that, we've also
19 requested and been advised that you're free on September 21st
20 and 22nd, as well as the morning of September 23rd. And in
21 advance of all of that, your Honor, we would request that we
22 schedule a pretrial status conference for September 6th, that
23 we also understand is available based on your calendar.

24 **THE COURT:** Let's see. All right. Let's go back.
25 Looks like there may have been a slight miscommunication, but

1 I -- I think we can get there. I have the afternoon of the
2 21st, not the whole day. On the 22nd, I can move a couple of
3 things. We can probably start -- we can start, you know, 9:15-
4 ish, 9:30-ish. What I would probably suggest is that we go
5 through the normal lunch hour just so you have maximum use of
6 time. I've got a 2:00 o'clock individual Chapter 11
7 confirmation hearing. It just can't take very long, and my
8 thought would be is that, you know, we'll just schedule lunch
9 around that and you all can take a break while I handle that,
10 if that works for everybody. It will be a late lunch, but I
11 can't imagine that would be that bad. We can start a little
12 later if we need to. And, then -- and I have time on -- I have
13 a significant chunk of time on the 23rd, so I can certainly
14 give you those three days, if that helps.

15 **MR. MEYER:** I think that's (indiscernible), your
16 Honor. I think that that's --

17 **THE COURT:** All right.

18 **MR. MEYER:** -- consistent with the general discussion
19 we discussed -- the general schedule we discussed with the plan
20 objecting parties. I think that --

21 **THE COURT:** But the goal would still be to start on
22 the 13th?

23 **MR. MEYER:** Correct. That's right, your Honor.

24 **THE COURT:** All right.

25 **MR. MEYER:** And I think that, based on the

1 discussions today, that's -- there is an agreement between each
2 of the plan objecting parties.

3 There is going to be a pretrial status conference on
4 the 6th, and people may make different arguments at that point
5 in time, to be clear, but as it relates to today and what we
6 were targeting today and the purpose of it being, that's where
7 we sit.

8 **THE COURT:** No, fair enough. And on the status
9 conference for the 6th, how much time were you thinking? And
10 I'm not going to hold a stopwatch. I'm just trying to
11 schedule. Is this a 30-minute? Is it a three-hour? What do
12 you anticipate?

13 **MR. MEYER:** From my standpoint, your Honor, and --
14 and -- I would anticipate that we're going to be on the shorter
15 side than the longer -- the longer side.

16 **THE COURT:** All right. Everybody agree with that?
17 Mr. Anker?

18 **MR. ANKER:** Philip Anker, Wilmer Cutler Pickering
19 Hale and Dorr, your Honor, for Delaware Trust as EPL --

20 **THE COURT:** And I didn't mean to pick on you; it's
21 just over the years I've --

22 Can we turn the microphone around? She can't hear
23 you. It's out in the front.

24 I didn't mean to pick on you. It's just over the
25 years I have learned that you are a pretty good estimator of

1 time. That's all I was -- the only reason I looked to you.

2 **MR. ANKER:** I hope I'll be good to my past
3 experience. I suspect that it could be longer than that, but I
4 don't think it's three hours. I do want to underscore, your
5 Honor -- and I think on this I speak for all the objectors, but
6 if not, they should speak up.

7 **THE COURT:** Sure.

8 **MR. ANKER:** We do think it makes sense at the moment,
9 and we are hopeful that we can go forward on the 13th and 14th.
10 We're hopeful that we will be able to persuade your Honor that
11 the plan that is currently on the table is not confirmable, and
12 so that we can move forward, and I think you've seen evidence
13 there are substantial negotiations going on of an
14 alternative --

15 **THE COURT:** Sure.

16 **MR. ANKER:** -- plan, and I would like a few minutes
17 to chat about that, not right this second.

18 **THE COURT:** Sure.

19 **MR. ANKER:** I do think in terms of the 6th, just to
20 give you a sense, there have been depositions every day. There
21 are two, maybe three deps. scheduled tomorrow and each day the
22 rest of the week. And I certainly think the debtors have been
23 operating in good faith. Having said that -- and, again, I'm
24 not at all suggesting this is anything other than what happens
25 in the real world -- we got 18,000 pages of new documents the

1 other day that we haven't had a chance to go through, but they
2 may well require witnesses who have already been deposed to be
3 redeposed. The schedule in terms of sort of when we're likely
4 to get done fact discovery has slipped easily a week, if not
5 two. And I want to just give the Court a heads up that it is
6 possible -- I'm not predicting it -- it is possible that on the
7 6th some or all of the objecting parties will have a different
8 view on whether the 13th or 14th works.

9 **THE COURT:** Right.

10 **MR. ANKER:** But at the moment I don't think any of us
11 are in a position to say to your Honor it doesn't work, period,
12 full stop.

13 **THE COURT:** Got it. So, with respect to the
14 scheduling conference on the 6th, that is a normal travel
15 afternoon for me to Corpus. But what I would propose is this,
16 is to give you an 11:00 o'clock, and I'll just go ahead and
17 reserve the late flight Tuesday night, so you'll have five
18 hours max. I hope we don't need it, but if we do and there are
19 other issues develop and there's need for emergency
20 consideration of whatever might occur, you've got a significant
21 block of time. Does that work for everybody?

22 **MR. MEYER:** It certainly works for me, your Honor.

23 **MR. SPEAKER:** Yes, sir.

24 **THE COURT:** All right. All right. So, Ms. Staples,
25 if you'd set a scheduling conference --

1 **(Voices and whispers off the record)**

2 **THE COURT:** No, understood. We'll set -- we'll set a
3 scheduling conference or a status conference for September the
4 6th at 11:00 o'clock. Then, with respect to continued days for
5 confirmation, let's go ahead and block out -- I think you'd
6 already done this -- yeah, block out the 21st from
7 11:00 o'clock forward, the 22nd from -- we'll block out from
8 9:15 forward with the understanding that we've got that issue
9 at 2:00 o'clock, and then the 23rd we'll block out from 9:00
10 until 2:30, and then, dependent upon if you need it -- I
11 haven't yet figured out if the 3:00 o'clock is ten minutes or
12 two hours. I just -- I haven't figured that out yet. That
13 work?

14 **MR. MEYER:** Yes, it does, your Honor. Thank you.

15 **THE COURT:** All right. What else can -- what else do
16 we need to address today?

17 **MR. MEYER:** Well --

18 **THE COURT:** Do we still have discovery issues that we
19 need to deal with?

20 **MR. MEYER:** We do. There are a couple of discovery
21 items that we will address; a couple items before that, your
22 Honor.

23 **THE COURT:** Okay.

24 **MR. MEYER:** First, the standing motion that was filed
25 by the EPL Ad Hoc Group; they have agreed that that motion will

1 be carried to the confirmation hearing set for September 13th
2 as well. The creditors committee supports that adjournment of
3 that motion, too. The Ad Hoc EGC Group, you may recall, your
4 Honor, they filed a motion in response to the EPL motion
5 predicated on if the EPL group was granted standing, that the
6 Ad Hoc EGC Group should be granted standing. They have not
7 agreed to that adjournment. They would like to prosecute their
8 motion today, so we will be talking about that a little bit,
9 and --

10 **THE COURT:** Well, let me just -- and hopefully this
11 will facilitate some additional discussions. The way that I
12 look at this, and I -- I know that a transcript was gotten of
13 what I said in *Midstates*, and, you know, I don't pretend to be
14 the most eloquent in the world, but I meant what I said there,
15 and I think it applies here. I don't see how standing can
16 coexist with a proposed compromise embodied in a plan. If the
17 debtor fails, then the debtor fails, and then all bets are off.
18 And I think I've made that -- if I haven't made it pretty
19 clear, I'm, hopefully, reiterating that concept again. But in
20 terms -- and I think that if the plan fails, I think that the
21 movants will almost, by definition, have established the
22 necessary criteria for standing. I'm not saying it's -- I'm
23 not making that determination today, but it's going to be an
24 uphill battle if the plan fails for the debtor to convince me
25 that the requirements for standing haven't been met, because at

1 that point we have a failed compromise, we have a debtor,
2 and -- we have two debtors in untenable positions, at least in
3 terms of being able to evaluate those claims in a different
4 manner.

5 So, my inclination, I'm not going to proceed forward
6 with a prosecution of the standing motion today. I think it
7 would be a waste of everybody's time. I came out prepared this
8 morning to talk about continuing those to confirmation. It
9 only makes sense. It's -- the issues are intertwined, so -- if
10 that causes anybody heartburn, I'll certainly hear it. I'll
11 hear arguments, but you're going to be -- it's going to be a
12 tough battle to get me to hear that today ahead of
13 confirmation, because I just think I'm going to hear the same
14 thing twice. I mean, maybe in a different form, but it's --
15 substantively, it's the same thing. You know, that's -- those
16 are my thoughts.

17 **MR. MEYER:** Thank you, your Honor. Those certainly
18 reflect our views based on the papers, as well.

19 A couple of additional points for your Honor related
20 to scheduling and housekeeping. Our scheduling order, there is
21 a -- there was for the plan objectors a milestone that expert
22 reports would be provided by this Friday, August 26th. In
23 connection with these discussions, we've agreed to -- and I
24 should, more importantly, say the plan objectors have agreed
25 to -- extend that deadline to this upcoming Monday,

1 August 29th, at 6:00 p.m. central time.

2 **THE COURT:** All right.

3 **MR. MEYER:** And the corollary to -- and that is to in
4 part address the concern that Mr. Anker reflected that we'll
5 talk about a little bit with respect to the finer points of the
6 discovery disputes, as well as the corresponding date for our
7 rebuttal reports to come in would be extended to Tuesday,
8 September 6th, at 2:00 p.m. central time, that being -- it had
9 previously been the preceding Friday, September 2nd.

10 **THE COURT:** So, that -- that will fall after our
11 status conference. Do we want to reverse those? Or -- I don't
12 know what is going to come up. Do you want to have that status
13 conference later in the day so that you can then, if there are
14 expert issues that you see and you need to raise -- I know
15 you're not going to have a lot of time, but --

16 **MR. ANKER:** Your Honor, I think that's a very
17 thoughtful and good suggestion. That would make sense. It
18 would give us a little bit of time to at least digest those
19 reports, so if that would be agreeable to your Honor, it would
20 be good for us.

21 **THE COURT:** It's fine with me. You have the whole
22 day. When would you like to -- when would you like to start?
23 Seems to me it would make a whole lot of sense, if you all can
24 agree, is that you get the rebuttals maybe by noon and you have
25 the hearing at 2:00. And that -- that gives you a couple

1 hours.

2 **MR. ANKER:** I see a (indiscernible) --

3 **MR. MEYER:** I'm a -- I'm a very reasonable guy, your
4 Honor, and I also read body language well, and so, yes, that's
5 amenable to us.

6 **THE COURT:** All right. So, and are we going to
7 embody this in an agreed order, or are we simply just going to
8 make the announcements on the record?

9 **MR. MEYER:** I'm comfortable -- we made the
10 representations on the record. I think everybody is acting in
11 good faith with respect to these changes. I don't think there
12 is anything that we need to do more formally than that, your
13 Honor.

14 **THE COURT:** All right. So, rebuttal -- rebuttal
15 reports by noon. We'll move the scheduling hearing on the 6th
16 till 2:00, and that way if something major exists we can just
17 take it up then.

18 **(Pause)**

19 **MR. MEYER:** Thank you, your Honor.

20 **THE COURT:** Uh-huh.

21 **MR. MEYER:** I will step back and just take a
22 couple -- make a couple observations for today's hearing based
23 on a couple of the discussions associated with the intercompany
24 note, plus the creditors committee's exclusivity objection that
25 was filed on Friday night, and that dovetails with some of

1 Mr. Anker's comments, before go to the agenda for the rest of
2 the day.

3 And I think, your Honor, the first day we came into
4 your courtroom here, we provided a very detailed overview of
5 the company's capital structure, and one of the items we had
6 flagged that we anticipated would become a key issue in these
7 cases is the second intercompany note --

8 **THE COURT:** Right.

9 **MR. MEYER:** -- from EPL to EGC. And it's an
10 important reason, your Honor, one of several, why independent
11 directors are at both boxes and that independent directors have
12 separate counsel. And just by way of refresher, EGC has
13 Mr. George Morris as its independent director, and he's engaged
14 Andrews Kurth as his counsel, and Jim Latimer at EPL is the EPL
15 independent director, and he has engaged Porter Hedges as his
16 counsel. As part of our standing objection, your Honor, we did
17 attach the resolutions that appointed Mr. Morris and
18 Mr. Latimer, respectively, as effectively restructuring
19 committees of one to deal with any issues in which there are
20 conflicts between EGC and EPL.

21 **THE COURT:** Uh-huh.

22 **MR. MEYER:** And, so, while we made that prediction to
23 your Honor -- and the WilmerHale group had the -- WilmerHale
24 was representing a smaller ad hoc group at that particular
25 point in time -- as a reminder, the unsecured noteholders in

1 this case had not organized prior to the petition date. It was
2 a very unique circumstance in which an interest payment was
3 missed in February on the EPL bonds; that interest payment was
4 cured in March; and ultimately the company, as you know, filed
5 in April. And, similarly, on the ad hoc EGC side, an interest
6 payment was missed in March and ultimately not made, in part
7 leading to the commencement of these cases in April.

8 And, so, I give that backdrop just for where we are
9 and where we're going. It's no surprise that we have ad hoc
10 groups in a big fight about this nuanced issue.

11 **THE COURT:** Sure.

12 **MR. MEYER:** I'd also note that there has been
13 significant turnover, we believe, in the bond group from --
14 well, for (indiscernible) various points in time between the
15 time the second intercompany note was issued and where we sit
16 today, including during the course of these cases. And I think
17 your Honor appropriately noted that what we've done here is
18 seek to settle all disputes that are raised in the standing
19 motion as part of our -- the plan that's been filed and as --
20 we agree with your Honor that that will be taken up in
21 connection with confirmation, and there is also no dispute that
22 discovery on these issues remain and is ongoing. John Schiller
23 is going to be deposed tomorrow. He is the company's CEO, as
24 you know. He's also a board member at both EGC and EPL, and
25 he's a 30(b)(6) witness on certain topics, too. And Mr. Morris

1 and Mr. Latimer will be deposed on Thursday and Friday of this
2 week, respectively. And, so, there is no question that parties
3 in interest will have their ability to object to confirmation
4 if they want to do so on this particular point, and the Court
5 will take a good, hard look at that.

6 The other comment that I make, quickly, your Honor,
7 relates to the exclusivity objection that was filed on Friday
8 night. We filed our short statement yesterday leading up to
9 today's status conference, and I would emphasize that, as
10 (indiscernible) -- and I don't want to belabor the point, but
11 we had not received proposals and we still have not received
12 any term sheet from any particular party. And it's
13 unquestioned that the debtor controls exclusivity at this
14 point. And we're going to take a hard look at that particular
15 issue. The fact that outlines of proposals were included in
16 exclusivity objections in advance of today's hearing, people
17 know where we are. We're in constant communication with folks.
18 If there is a proposal to be had, and there is an idea that
19 somebody has, the appropriate way for that to be channeled in
20 the best interests of the company and all of the stakeholders
21 is through the debtors as estate fiduciaries. The company and
22 its directors, as well as the independents, take those
23 fiduciary duties very seriously. There is a robust fiduciary
24 out in the restructuring support agreement that reflects
25 exactly that.

1 And, so, I think, you know, your Honor, as a general
2 tenor, we wanted to make sure we explained that to the Court,
3 but I think an important point that I would also raise is,
4 while we'll continue to have those discussions -- and I don't
5 think there is any question that we have been, in particular,
6 very active in all of those with various parties, and most
7 specifically, the advisers to the creditors committee -- we
8 also believe that the plan that's currently been proposed is
9 confirmable. And, of course, that's not an issue for today,
10 but we believe that the plan will satisfy the requirements of
11 Section 1129 and can be confirmed.

12 So, with that, your Honor, I will turn the podium
13 over. I think it's likely to Mr. Anker first to comment on his
14 standing motion, as well as some other items, to Mr. Goldberg
15 to discuss the standing motion, and then Mr. Starner.

16 **THE COURT:** Let me -- and just to -- because I -- if
17 you folks are talking, I want that to continue, and I don't
18 want to say something or do something that changes the balance
19 of those negotiations. With respect to exclusivity today,
20 having read everything, what I was contemplating doing was, to
21 the extent that it's required, extending exclusivity through
22 what would now be the 23rd. I've said it multiple times, and
23 I've said it different ways. I'm going to give the debtor its
24 shot. I haven't yet been able to assess your chances of
25 success; I just don't know. But I'm going to give the debtor

1 its shot to either negotiate some of the issues down to where
2 they're manageable, or if you think that you can just beat
3 everybody, I'm going to give you that shot. And I don't want
4 the existence of another plan or other discussions to get in
5 the way of that. I want that to be fully vetted.

6 What I will do on the 23rd in terms of plan
7 alternatives or anything else -- and that's just assuming,
8 Mr. Anker, that you take all the time that I've given you; the
9 end of confirmation, be it the 13th, 14th, or the 23rd -- what
10 I will do at that point with respect to plan alternatives
11 and -- and, you know, allowing other folks to file plans is
12 going to depend on what I hear, in large part. And, so, my
13 thought is, you know, I'm not going to say you've got -- you
14 know, that you've got exclusivity through the end of the year.

15 **MR. MEYER:** Uh-huh.

16 **THE COURT:** And what I'm telling you is, I'll give it
17 to you through the end of the confirmation process, and I'm
18 going to watch and I'm going to listen and I'm going to then
19 ask for arguments and try to figure out the right thing to do
20 going forward.

21 **MR. MEYER:** Uh-huh.

22 **THE COURT:** That -- that's kind of my thought on the
23 process. I don't --

24 **MR. MEYER:** So, I think, your Honor, actually, we've
25 thought about it very similarly. We filed our exclusivity

1 motion several weeks back now. And the objection deadline that
2 was part of the bridge order that we reached with the plan
3 objecting parties --

4 **THE COURT:** Uh-huh.

5 **MR. MEYER:** -- contemplates that our exclusive period
6 to file a Chapter 11 plan is extended through the earlier of
7 the end of confirmation or September 30th or a date on or
8 around that date, with the theory being that we were protected
9 to be able to go prosecute our plan, and if we don't succeed,
10 then we reserve whatever rights we have to request a further
11 extension of exclusivity --

12 **THE COURT:** Right.

13 **MR. MEYER:** -- other parties reserve whatever rights
14 they have to either object to that extension request or to move
15 to terminate exclusivity. And, so, your Honor has entered a
16 bridge order to that effect, so I think we're largely --

17 **THE COURT:** We're already through the end of
18 September, so I'm -- I don't know why I had in my mind that
19 that was still an issue. So, we're good through September 30?

20 **MR. MEYER:** That's correct. The way that it works,
21 just to be -- and I'll let Mr. Goldberg comment if he feels --

22 **THE COURT:** Okay.

23 **MR. MEYER:** -- I'm getting the words wrong here, but
24 it's -- the exclusivity extension itself contemplates that our
25 motion that we filed would be heard either on the earlier or of

1 immediately following the confirmation hearing, the conclusion
2 of the confirmation hearing, or around September 30th. And I
3 say "around" because that's based on the availability of the
4 Court.

5 **THE COURT:** All right. I'll just tell you, and
6 I'm -- I'm going to be asking the questions once we conclude
7 the hearing on confirmation, assuming that I don't confirm it.
8 So, I mean, I want everybody to have that on their list of
9 things to be prepared for. Because I do think everybody
10 deserves an answer. I mean, if you don't -- if you have
11 difficulty -- you all were in here when you heard my 9:15. You
12 know, that's real life. Those are folks who can't make the car
13 payment and who are in a house that's \$50,000 under water.
14 Those are the people that get affected most by all of this.
15 And, so, I'm not going to delay it. You know, if you can win,
16 you can win. If you can't, I'm going to look for the next best
17 winner. And I'm going to do that quickly. So, everybody --
18 you know, if you can't -- if you don't prevail, be ready to
19 talk about Plan B. I'm not going to -- not going to give
20 everybody two weeks to go figure out what the plan is; you'd
21 better have Plan B in your pocket when you come.

22 **MR. MEYER:** Uh-huh.

23 **THE COURT:** Fair enough?

24 **MR. MEYER:** That's fair enough, your Honor, and --

25 **THE COURT:** Okay.

1 **MR. MEYER:** -- that's probably why, one, we believe
2 we'll be able to confirm the plan, and, two, that's why the
3 order is set up exactly in that manner.

4 **THE COURT:** Got it. Okay.

5 **MR. GOLDBERG:** Good morning, your Honor.

6 **THE COURT:** Good morning.

7 **MR. GOLDBERG:** For the record, Adam Goldberg of
8 Latham and Watkins on behalf of the official committee of
9 unsecured creditors.

10 **THE COURT:** Yes, sir.

11 **MR. GOLDBERG:** I'm joined today with -- by
12 Christopher Harris and Heather Waller from Latham, as well as
13 Tristan Manthey and Billy Patrick from Heller Draper.

14 **THE COURT:** Good afternoon, folks. I -- actually,
15 when I came out, I thought all of this had been resolved, so I
16 apologize for -- I thought I was going to get an announcement
17 that everything was all agreed to, and that's why I didn't take
18 appearances, so my -- my error.

19 **MR. GOLDBERG:** Understood, your Honor, and we -- and
20 we did make quite a bit of progress.

21 **THE COURT:** Sure.

22 **MR. GOLDBERG:** If I might be heard for just a minute
23 or two to respond to -- I think --

24 **THE COURT:** Of course.

25 **MR. GOLDBERG:** -- it's important to note that the

1 committee shares the debtor's desire to move quickly, as well
2 as your Honor's desire to move quickly. We did see real life
3 here today in the courtroom, and the members of our committee,
4 including trade creditors, are very deeply vested in the future
5 of this company and are looking forward to a speedy
6 reorganization. I would say that the debtor -- the committee
7 shares also the debtor's desire to move forward with the
8 confirmation hearings, although for a somewhat different
9 reason, because our view is that defeat of the plan is the
10 fastest way to advance towards confirmation.

11 To frame the landscape of these cases for your Honor,
12 we filed our exclusivity objection on Friday. Two important
13 points to note there. One, which I think the debtors did not
14 bring up, is that the committee has worked with unsecured
15 creditors towards -- to safeguard the estates through a standby
16 DIP financing facility to provide liquidity in the event that
17 there is a destructive storm and the debtor needs to bridge
18 until the time when its insurers honor their obligations. As a
19 result of those efforts, the debtors have now received a term
20 sheet for a standby DIP facility from a global investment bank,
21 and we'd encourage the debtors to work with them and other
22 potential financing sources on that term sheet.

23 Second, the committee has been engaged with creditors
24 and other parties to develop a confirmable plan that would
25 maximize value for unsecured creditors. Our exclusivity

1 objection describes a framework that would be designed to pay
2 the second lien noteholders in new debt and cash at a value to
3 which they have agreed and support under the debtor's plan
4 through -- through new money investments by unsecured
5 creditors. What that reflects, your Honor, is that groups have
6 organized not only to litigate, but also to speak with their
7 checkbooks and bring new value and underwrite greater value for
8 all unsecured creditors.

9 So, in sum, we look forward to progressing with
10 confirmation hearing as quickly as possible so that the estates
11 can benefit for the opportunity for unsecured creditors to
12 bring that new value to the table. And to sustain that
13 process, we think it prudent that the debtors should engage
14 with financing sources over a potential liquidity facility to
15 guard the estates in light of the hurricane risks that the
16 debtors have described and because, at least in the committee's
17 view, the current plan will not result in confirmation.

18 **THE COURT:** All right. And, so, what do you think it
19 is that I ought to be doing that's different than what I've
20 indicated my thought process is?

21 **MR. GOLDBERG:** I think your Honor has set out exactly
22 what we'd like to hear, which is that we will move forward with
23 confirmation and that we'll take stock of where we stand at
24 that point. In the meantime, you know, we have expressed our
25 views that the debtors engage with financing sources on a

1 potential DIP facility and that we think that's the prudent
2 approach for the time being.

3 **THE COURT:** All right. Thank you.

4 **MR. GOLDBERG:** Thank you, your Honor.

5 **THE COURT:** Mr. Anker?

6 **MR. ANKER:** Philip Anker again, your Honor, and I'm
7 joined by my partner, Dennis Jenkins, and my colleague, Chris
8 Looney.

9 Your Honor, I rise only to say a few things, some of
10 which are small and concrete and some of which are bigger
11 picture perhaps, more unconcrete. I would ask that the Court -
12 - and I think it's implicit in what you said -- but we would
13 request that the standing motions be continued to the
14 confirmation hearing rather than after the confirmation
15 hearing. We read what you said in *Midstate*. I was prepared to
16 argue today, but I like to think I listen to judges, and I
17 thought you were going to say exactly what you said, and that's
18 why we were prepared to continue it.

19 **THE COURT:** Okay.

20 **MR. ANKER:** But we agree it's the flip side of a
21 coin. And we agree with the proposition that if this plan does
22 not get confirmed, and we firmly we believe it will not be,
23 that we need to move forward in that direction.

24 **THE COURT:** All right.

25 **MR. ANKER:** Second, then, I hate to be the bearer of

1 bad news rather than good news -- I'm not sure anyone in this
2 courtroom is comfortable that at the end of the 23rd the
3 confirmation hearing will be done. I think there are different
4 views on how many witnesses there are.

5 **THE COURT:** All right.

6 **MR. ANKER:** But I want to give you a fair warning. I
7 just think people thought, rather than put days on your
8 calendar today and mess it up so you couldn't deal with other
9 cases, we'd take stock then. But I'm going to make a
10 prediction. My prediction is we're not done then --

11 **THE COURT:** Got it.

12 **MR. ANKER:** -- to be candid.

13 **THE COURT:** No, I appreciate you telling me that.

14 **MR. ANKER:** It may be different views.

15 Third, look, every time everyone rises here -- and I,
16 therefore, don't mean to be critical -- part of what you try to
17 do is influence the Court, and Mr. Meyer is a very skilled
18 advocate, and he did that. So, if you would bear with me, just
19 bear with me one minute while I try to do the same, albeit in a
20 different direction.

21 We've heard about these independent directors, and we
22 will take their depositions. But there was unequivocal
23 testimony under oath yesterday by their financial advisor, and
24 this is almost a direct quote: "The plan was fully negotiated
25 before they were appointed." Asked twice; same answer given

1 both times. That's the reality of the record here. What
2 they're going to tell you about is how when it came to
3 negotiating the crumbs left on the table between the EGC bonds
4 and us, you know, one half of one percent of the equity, they
5 ended up negotiating that between the two independent
6 directors. But when it came to giving the lion's share of
7 everything to the two L's, that was negotiated without any EPL
8 or EGC unsecured creditor around. You're going to hear a lot
9 of testimony like that. I'm not going to give you a preview of
10 all of it, but what I've heard this week has been, frankly,
11 startling about the lack of serious negotiations and serious
12 diligence.

13 Let me say this to the Court. We take seriously
14 exactly what you said and what Mr. Goldberg said, which is we
15 don't want to be at ground zero if at the end of the 23rd, or
16 whatever day it is, your Honor says, "This plan is not
17 confirmable." So, what we will be doing in the interim,
18 although we understand exclusivity is extended, is working
19 hard. My partner, Mr. Jenkins -- we heard you loud and clear
20 about the concern about a hurricane. That's what caused
21 everyone on our side to say, "Can we deal with that issue and
22 protect this estate?" Mr. Jenkins sent over that proposal from
23 a bank which is a member of our group. We have not heard a
24 response from the debtor. But we're prepared to negotiate to
25 provide contingent financing that takes that issue off the

1 table, and we hope and expect that the debtor will respond.

2 We are working on a plan structure that has the
3 support of the EPL notes, the EGC notes, and reflects a
4 settlement of the EGC intercompany, but really reflects one
5 other critical point. And that is that there is a fundamental
6 disagreement on value. The debtor's value of the whole
7 enterprise is a fraction of the view on, to my left, this side
8 of the table, of the enterprise. And we heard yesterday out of
9 the PGT expert that the two L's think it's worth less. And
10 when different people have different views on value, the way to
11 solve that problem is they get what they think it's worth and
12 we get what -- we take the upside if we're right. And, so, the
13 basic structure that we have in mind is we will take out their
14 claims on, frankly, the debtor's valuation, which is higher
15 than the two L's. And, so, if the two L's really believe it,
16 they should be sending us thank you notes, not fighting it.
17 And if they fight it, their actions will speak louder than
18 their words about what they really think value is.

19 We have retained management, management to come into
20 place; management that is familiar with these assets, in fact,
21 operated these assets before -- the EPL assets, at least --
22 before Energy XXI's acquisition of EPL. We are cognizant of
23 the need to deal with employees, to deal with BOEM. We have --
24 we're working hard on each and every one of those issues to
25 come up with a comprehensive alternative so if you agree with

1 us at confirmation -- and I understand it's confirmation of
2 their plan; you're not going to litigate alternatives plans --

3 **THE COURT:** Right.

4 **MR. ANKER:** -- but we will be ready to go. And I can
5 assure you there will be a lot of evidence on why this plan is
6 not confirmable.

7 **THE COURT:** Got it.

8 **MR. ANKER:** Thank you, your Honor.

9 **THE COURT:** Let me ask you this. Have you -- have
10 you tailored -- let's just -- just so I can think about this in
11 my mind, have you tailored your plan such that it can coexist
12 with the approved disclosure statement, or do you -- are you
13 contemplating an entirely new process?

14 **MR. ANKER:** One answer, your Honor, is I've given no
15 thought to the issue. That's a direct answer. I think to the
16 extent the disclosure statement describes a background history
17 of these companies, one could take it largely and cut and
18 paste. There are assertions in there by the Debtor about
19 disputed facts that we might say different people have
20 different views.

21 To the extent the disclosure statement, however, has
22 within it -- and I'm giving you off-the-cuff reactions -- as it
23 always would, a description of a plan, that would have to be
24 different.

25 **THE COURT:** Well, it has to be supplemented but there

1 are --

2 **MR. ANKER:** Sure.

3 **THE COURT:** -- there are conclusions and logical
4 extensions based on valuations and some other things that you
5 might take issue with. And what I was really trying to figure
6 out was, are we going to need to -- if the Debtors can't
7 confirm their plan and don't have a deal or whatever it turns
8 out to be, are we starting from scratch where we've got to
9 start anew or what -- what's in your game plan if you'll share
10 that?

11 **MR. ANKER:** Your Honor, we will -- I pledge to the
12 Court. We will work to come up with a mechanism and a process
13 that takes maximum advantage of the work that has been done to
14 date so we don't end up reinventing the wheel and it moves as
15 expeditiously as possible but also gives everyone due process.

16 **THE COURT:** Okay.

17 **MR. ANKER:** Certainly we can do that. Supplemental
18 disclosure statements are prepared all the time. Certainly a
19 lot of the discovery that has occurred to date, if not all of
20 it, would be applicable. We think we could move quite
21 expeditiously down a different route.

22 **THE COURT:** What I would also ask that you do is, as
23 you think through that plan, if you would spend -- because I
24 think it will be time well-spent -- spend a little time talking
25 to the U.S. Trustee. My guess is -- not my guess. Mr. Duran

1 has a pretty good sense of how I deal with shortening deadlines
2 and that sort of thing. It just -- I think that getting his
3 input as to what he would be comfortable with so that if we get
4 there, you can have that number in mind so -- as I start to
5 look at what a Plan B looks like. I would greatly appreciate
6 that.

7 **MR. ANKER:** We very much appreciate your Honor's
8 guidance and we will do that. Thank you, your Honor.

9 **THE COURT:** All right, thank you.

10 **MR. STARNER:** Your Honor, Greg Starner, White & Case,
11 on behalf of the EGC note group. I wanted to address some of
12 the points Mr. Anker raised and also discuss a little bit the
13 standing motion. I certainly heard your Honor's position with
14 respect to that motion.

15 Let me start with the alternative plan. I think
16 Mr. Anker hit the highlights. He basically outlined for the
17 Court kind of what the framework looks like but that is a very
18 large, complex, you know, plan that the parties are working
19 very hard to put together. A lot of parties are involved with
20 that but -- and obviously this is happening in parallel with
21 preparation for a very contested confirmation hearing which we
22 certainly are prepared to go forward with.

23 We just note that in terms of what the plan looks
24 like, you know, sort of the commitment is to ensure that the
25 company's operations continue seamlessly with respect to this

1 alternative plan. And on the hurricane issue, your Honor, I
2 think Mr. Anker did address that very well. What I will say is
3 we took it very seriously. We spent a lot of time digging into
4 the issue trying to understand what the company's coverage
5 looked like, what kind of management and mitigation was in
6 place for that and the DIP financing was something that was put
7 together with the goal of trying to address some of those
8 risks, your Honor.

9 Just with respect to the standing motion, if I may,
10 your Honor.

11 **THE COURT:** Sure.

12 **MR. STARNER:** I heard what the Court's position with
13 respect to the timing of it. You know, I just wanted to
14 briefly outline why we thought it was important to kind of talk
15 about this a little bit today and we're happy to address it at
16 the confirmation hearing again. But the context here really is
17 -- and it touches a little bit on the Debtors coming forward
18 and pointing to their special committee and some of the process
19 that occur here because, you know, seeking confirmation and
20 asking the Court to approve certain imbedded settlements really
21 doesn't address the process that was in place here.

22 You know, we were entitled to have unconflicted
23 fiduciaries with disinterested counsel and what we had here was
24 the primary unencumbered asset at EGC is this intercompany note
25 where it was effectively the same management and the same

1 advisors on both sides of that note.

2 **THE COURT:** Why does the process -- why is the
3 process not directly at issue when that 9019 is evaluated, if
4 you will? I mean, there's -- inherent in that is a requirement
5 of good faith and Circuit cases all reference, you know, arm's
6 length negotiation and a fair and open process and, you know,
7 all the pluses and minuses were weighed and there really was a
8 true, if you will, sort of, you know, give and a take in terms
9 of reaching a deal. Why doesn't that put the process right
10 square in the middle and available for everyone to take a shot
11 at?

12 **MR. STARNER:** It does, your Honor. I think you're
13 absolutely right and, frankly, the 9019 issue, we would suggest
14 to the Court it's really subject to entire fairness because you
15 had people on both sides of that issue but the issue is the
16 process leading up to the plan. The plan that has been
17 proposed --

18 **THE COURT:** Right.

19 **MR. STARNER:** -- is a product of this conflicted
20 process.

21 **THE COURT:** Right.

22 **MR. STARNER:** And so we think it's very important to
23 talk about what was that process and trying to even put in
24 place fixes if we can.

25 **THE COURT:** Right.

1 **MR. STARNER:** I mean, this is a potential -- not a
2 cure-all but it is a fix providing standing to an unconflicted
3 fiduciary to at least deal with these issues on the
4 intercompany note.

5 **THE COURT:** Aren't I -- I mean, I'm assuming at some
6 point I'm going to get a good-faith objection to confirmation
7 if I don't already have it. I mean, I would think that the
8 entire journey of how we got from Point A to September the 13th
9 is going to be part of the discussion. At least, that's what
10 I'm expecting to hear.

11 I mean, if there's going to be a challenge to -- that
12 this plan doesn't work because it is the byproduct of flawed
13 negotiations, I mean, I don't know what the answer to all of
14 that is but I'm expecting that if that's an issue, I'm going to
15 hear testimony about what was done and what wasn't done. Am I
16 off base on that?

17 **MR. STARNER:** No, you're absolutely on target --

18 **THE COURT:** Okay.

19 **MR. STARNER:** -- your Honor. It's really just a
20 matter of timing. I guess -- it's our view is, you know, these
21 are issues that are ripe now. I mean, certainly we could put
22 it off to confirmation when it all will be absolutely addressed
23 but, you know, you could -- you know, this is a conflict that's
24 in place right now. This is a flaw in the process right now
25 and so I view that there are some ways we could try to fix it

1 now and try to put in place some fixes to provide us -- you
2 know, provide standing to -- or at least put in place
3 protections and the type of unconflicted representation that
4 we're entitled to under the Code.

5 **THE COURT:** What is it that you think that you're
6 entitled to that you're not getting?

7 **MR. STARNER:** Well, first off, a fiduciary that has
8 no conflicts.

9 **THE COURT:** And is there anything -- I mean, I don't
10 think that -- if they're truly is a -- if there truly is an
11 issue with a fiduciary to the estate, a motion for standing is
12 not the way to address that.

13 **MR. STARNER:** To that point, I hear what your Honor
14 is saying and, look, this is not something that comes up --
15 this is not unusual. It comes up a lot in cases where you have
16 inter-debtor issues --

17 **THE COURT:** Uh-huh.

18 **MR. STARNER:** -- and oftentimes it's addressed
19 through negotiations and reaching consensus but obviously the
20 Debtors here didn't go that route. That's their prerogative as
21 the Court made clear to them.

22 **THE COURT:** Sure.

23 **MR. STARNER:** And standing isn't necessarily the most
24 comprehensive fix and certainly you could seek to disqualify
25 counsel. You could ask for the employment of a Trustee but it

1 was argued that this was a modest attempt to try to put a fix
2 in place. They didn't go that -- all the way down the road on
3 that.

4 **THE COURT:** Can I ask for the appointment of
5 independent board members? I mean, there are all sorts of
6 things that could be done. And I get what you're saying. I
7 look at just -- and I'm not asking you to see it from my
8 vantage point but I don't know whether the plan is the
9 byproduct of arm's length negotiations. I got -- you know I've
10 got one set of lawyers who are saying it absolutely all works.
11 I've got another set of lawyers saying, nope, it's not, it's
12 flawed.

13 And I hear all of that and I -- you can give me
14 examples but until I actually get an evidentiary record under
15 oath, you know, I don't know what the answer to that is and now
16 we've just started describing testimony that you're going to
17 have to put on in order to support or challenge confirmation
18 and I've been in cases as a lawyer where we have plans that are
19 at different points and it's just a big, unqualified mess has
20 been my experience. It's really difficult to manage.

21 It's hard for me to understand where everybody's
22 motivation is and if you haven't figured out, you know, I'm
23 very -- I look in the eyes of people and, you know, I have my
24 own ideas about where -- what people's true motivations are and
25 that all factors into what I do and what I say and, you know,

1 the orders I write and the language I use. I mean, all of that
2 factors into that.

3 It's just been my experience that if I say, okay, you
4 can go out and start working on a plan, then everybody's
5 motivation changes and people start negotiating from different
6 positions and I get even less of an accurate picture of where
7 people truly stand than I normally get.

8 And so it's -- I don't see the corresponding benefit
9 given where we are timewise. Now, if I'm missing something,
10 you know, I'm wrong every day about things and I fully
11 acknowledge that. So if I'm missing something that would push
12 the scale back the other way, I absolutely want to know it but
13 I don't see -- I just don't see a corresponding benefit to the
14 mess that I know that gets created once I open that up.
15 Serious about it if -- you know, if they fail, what I'm going
16 to consider to be important is going to change immediately but
17 that's -- I mean, that's just my thought process as I sit here
18 today.

19 **MR. STARNER:** And I appreciate that, your Honor.
20 Hopefully we're transparent kind of in our motives. Our
21 motives have always been focused on, you know, maximizing value
22 of EGC and having --

23 **THE COURT:** I've been a lawyer for 20 years and a
24 judge for five. There is no one in this courtroom that is
25 transparent, me included.

1 **MR. STARNER:** Fair. But just maybe to wrap it up and
2 sum, I think I've heard what the Court's position is on this.
3 We certainly will be developing the record and be putting
4 forward evidence on these issues --

5 **THE COURT:** Okay.

6 **MR. STARNER:** -- and, you know, our concern was
7 having this thought process and the costs involved in having to
8 go to what we think is a flawed and a doomed confirmation
9 hearing and --

10 **THE COURT:** Well, let me say this. I've thought
11 about that a lot too and if it is as self-evident as you say it
12 is, then that's going to factor into my ultimate determination
13 as to what the proper amount of compensation that ought to be
14 received should be. I mean, that's -- it would -- I could not
15 possibly be doing my job by signing a fee application for fees
16 on a final basis for a course of action that is unambiguously
17 destined to not comply with the Code. I mean, I just -- I
18 couldn't possibly meet standards I'm required to follow.

19 Now, if it's subject to genuine dispute, then that's
20 what -- you know, that's -- unfortunately costs are part of the
21 process that makes our system better than anybody else's and I
22 get that but I haven't forgotten about that. I mean, that's
23 been raised all along and in my mind, the cost factor -- if it
24 really is as one-sided as you say it is, they'll be a true-up
25 day and that's my way of dealing with that.

1 **MR. STARNER:** I understand, your Honor.

2 **THE COURT:** All right.

3 **MR. STARNER:** Keep in mind we're not paid by the
4 estate, of course.

5 **THE COURT:** Well, I'm assuming that you're going to
6 -- well, I -- but you might be. If what you're -- if you're
7 really doing God's work, as you want me to believe, I mean,
8 there's -- there are provisions under the Code that allow me to
9 recognize that. I mean, I don't know if we've met that
10 standard or not. I don't know if we've gotten there but there
11 are ways -- depending upon, you know, how far you're willing to
12 go, there are ways to even all of this out in terms of the cost
13 perspective. Dealing with the dollars is easy for me. It's
14 dealing with all the other things that causes me to lose sleep
15 at night.

16 **MR. STARNER:** Thank you, your Honor.

17 **THE COURT:** All right, thank you.

18 Yes, ma'am?

19 **MS. ALFONSO:** Good afternoon, your Honor.

20 **THE COURT:** Good afternoon.

21 **MS. ALFONSO:** For the record, Ana Alfonso from
22 Willkie Farr & Gallagher, counsel for Wells Fargo which is the
23 first lien agent.

24 **THE COURT:** Yes, ma'am.

25 **MS. ALFONSO:** We've, your Honor, been largely outside

1 of the fray here. We caught our deal, if you will, several
2 months ago. So we're just footing the bill for all of these
3 skirmishes and I don't mean to belittle them. The bank
4 understands that there are a lot of incredibly nuanced issues
5 to contend with in order to get through to confirmation but I
6 rise because the Debtors have asked the first lien agent to
7 consent to extend cash collateral through September 30th which
8 certainly makes sense given the time table that's in front of
9 us now but the forecasted professional fee budget, not just for
10 the Debtors but for all the fees that the Debtor is --

11 **THE COURT:** Okay.

12 **MS. ALFONSO:** -- supposed to pay from the beginning
13 of the case through October 10th is \$75 million, your Honor,
14 and the go-forward projected burn rate, which I'm told could be
15 higher, is 8 to \$10 million thereafter. So --

16 **THE COURT:** So that's through the end of September?

17 **MS. ALFONSO:** Through the end of September --
18 actually technically through October 10th --

19 **THE COURT:** October 10th, okay.

20 **MS. ALFONSO:** -- \$75 million. Now, I don't know if
21 they'll hit that or not. It'd be nice if people could find
22 some common sense and economical solutions to all of these
23 issues to try to get to an agreed confirmation hearing but
24 hopes springs eternal.

25 Your Honor, I'm saying this because we really read

1 for the first time over the weekend these aspirations about a
2 hurricane disaster DIP which obviously no one's spoken to Wells
3 about having their liens primed by a DIP, let alone extending
4 this case through October and beyond to try to roll the dice
5 through hurricane season, not to mention deal with all of these
6 fees.

7 There's a lot to contend with and I rise in part to
8 just send a message to everyone in this courtroom, not just
9 your Honor, that we really do need to do exactly what your
10 Honor has admonished which is to try to get everything on the
11 table and get it over with in September or there are going to
12 be a lot more problems ahead of us.

13 **THE COURT:** That's helpful. Thank you.

14 **MS. ALFONSO:** Thank you, your Honor.

15 **THE COURT:** Thank you.

16 Mr. Androphy, I saw you get up and then sit down and
17 I'm --

18 **MR. ANDROPHY:** I was standing up with my co-counsel,
19 your Honor.

20 **THE COURT:** I'm sorry.

21 **MR. ANDROPHY:** I was thinking of saying something but
22 I really wasn't sure.

23 **THE COURT:** All right. I'm sorry, sir. Please --

24 **MR. MYERS:** Your Honor, for the record, Todd Myers,
25 Kilpatrick Townsend, on behalf of Wilmington Trust as the

1 Indenture Trustee for the EGC unsecured notes. Your Honor, I
2 know obviously we're not arguing confirmation today but I think
3 everybody is just giving your Honor a couple things to think
4 about as we head towards that hearing and I think echoing some
5 of the conflicts that were pointed out by counsel for the Ad
6 Hoc EGC Noteholders, your Honor, there were some papers filed
7 last night -- a lot of papers filed last night including a
8 pleading by the Debtor which was their omnibus objection to the
9 derivative standing motions.

10 **THE COURT:** Uh-huh.

11 **MR. MYERS:** Your Honor, in Paragraph 28 of that
12 motion, the Debtors state that they worked -- that they have
13 worked and continue to work on a transparent basis towards
14 achieving their restructuring goals of eliminating
15 substantially all of their funded indebtedness.

16 Your Honor, I think every CEO in America would like
17 to eliminate all of their funded indebtedness but my client
18 represents the interests of holders of over \$700 million in
19 notes that don't think their indebtedness should be eliminated
20 and I don't want your Honor to gloss over what sounds like a
21 noble goal.

22 That is not what you're entitled to under the
23 Bankruptcy Code. You're certainly entitled to rehabilitation
24 and a relief from your debt but depending on values and
25 1129(a)(7) and 1129(b)(1), you're not entitled to elimination

1 of all of your funded indebtedness and I don't think that if we
2 had a -- I'm not suggesting that we're -- we certainly have not
3 moved for the appointment of a Chapter 11 Trustee but because a
4 Debtor acts as a Trustee with a fiduciary duty to the estate
5 and its creditors, I want you to think about whether a Trustee
6 here trying to reorganize this company would have as its goal
7 eliminating substantially all of the funded indebtedness.

8 Now, the second liens have presented the Debtors with
9 -- as any second lien creditor in this situation would -- with
10 the perfect path to do that. They've said, if you get rid of
11 all of your unsecured debt, we'll get rid of our secured debt
12 and we'll be the equity and of course they would. Why would a
13 secured creditor not be? If you control the company, you
14 control the board coming out and you have no debt above you,
15 then you not only can get repaid the value that you have in
16 this as secured creditor but you get all of the upside. Okay?

17 But that is not the -- you will hear at confirmation
18 that's just not the dynamic that is presented here. We don't
19 have assets that are 100-percent encumbered and under water
20 such that the unsecured creditors are out of the money. Even
21 by the Debtors own admission in their disclosure statement and
22 in the plan, the unsecured creditors are in the money.

23 Now, we disagree exponentially with what -- with how
24 much we are in the money but even under the Debtors' admission,
25 we are in the money and yet the consideration of providing for

1 that is out-of-the-money warrants which don't get in the money
2 until the second liens have been paid in full. That is giving
3 the second liens their cake and eating it too. So that's
4 simply what we want your Honor to consider as we move to
5 confirmation.

6 **THE COURT:** Fair enough.

7 **MR. MYERS:** Thank you.

8 **THE COURT:** Let me give you an area of comfort if I
9 can.

10 **MR. MYERS:** I'll take it.

11 **THE COURT:** Because of my push toward confirmation
12 often gets misread as that I think the plan works or I think
13 this is a good idea, totally mutually exclusive and I -- the
14 one thing that I have learned over the years is that what I
15 will see on the day of confirmation is probably different than
16 what exists today. My focus is only on the process. When we
17 get through the process and we get to confirmation, then I'll
18 get to the substance.

19 And I just don't want you to think that my comments
20 -- and I know I do it with a lot of colloquialism and it's just
21 -- it's my personality. You know, when I say that I'm going to
22 give the Debtors their shot, what I mean is that they've asked
23 for a confirmation date. I'm going to give them a confirmation
24 date. In terms of whether or not they've made good decisions
25 or bad decisions, you know, that's what we will determine on

1 September the 13th, not beforehand.

2 And that's all I'm doing is I'm trying to get to the
3 substance by pushing the process forward but I'm by no means
4 giving an endorsement of a gleaning of how I feel about a
5 particular plan or a particular provision. All of that is a
6 very separate issue with me and so I don't want you to think
7 that I in any way am trying to push something through. I am
8 trying to push. I'm trying to push to that day because I think
9 -- I mean, \$75 million -- I hadn't heard that number.

10 That's got to make anybody worry a little bit. You
11 know, when you think about this morning I spent, you know, an
12 hour on somebody's 30,000-dollar car and a hundred-and-fifty-
13 thousand-dollar home, you know, \$75 million is a lot of money.
14 Now, the zeros don't bother me one way or the other. Lawyers
15 have to get paid. You know, I understand that but it ought to
16 be a sign to us all that we ought to get this process to a
17 conclusion. We ought to find out if the Debtors are right or
18 if they're wrong and if they're right or at least I think
19 they're right, then the course of action is dictated for
20 everybody who disagrees with that conclusion.

21 If I find that the Debtors are wrong, then
22 everybody's got to immediately react and go down a different
23 path and hopefully does not cost another \$75 million.

24 **MR. MYERS:** Right.

25 **THE COURT:** That's all and I didn't mean to drone on.

1 I just tried to give you some insight. I'm not endorsing
2 anything. I'm -- all I'm doing is trying to get to a date.

3 **MR. MYERS:** Understood, your Honor. I appreciate the
4 comfort. Thank you.

5 **THE COURT:** All right, thank you.

6 **MR. LEBLANC:** Your Honor --

7 **THE COURT:** I think we've got one more and I'll give
8 you second round.

9 **MR. LEBLANC:** I apologize, your Honor. Andrew
10 LeBlanc of Milbank, Tweed, Hadley & McCloy on behalf of the
11 Ad Hoc Group of Second Lien Lenders.

12 **THE COURT:** Yes, sir.

13 **MR. LEBLANC:** I'll try to be very brief but there was
14 a lot of comments and then there seems to be an almost
15 unnatural amount of commentary about Plan B and about the
16 alternative plan and I do want to give the Court just a little
17 context because I think your Honor -- I think was
18 understandably confused about when exclusivity was actually up
19 because objections were filed over the weekend or late last
20 week.

21 Those objections weren't actually due until September
22 6th which would have been both after the status conference --
23 be that as it may -- but also after the votes would have been
24 calculated and I think that goes back to what Mr. Myers
25 suggested about they're looking very seriously about the -- at

1 the exclusivity issues.

2 Now, I also think we need -- I need to comment for a
3 little bit about what Mr. Anker has said and we're -- our head
4 is a little bit spinning about their views as to valuation.
5 We're now delayed for a few days and actually finally seeing
6 what their valuation is. We'll understand that on August 29th
7 now, not this coming Friday but the reason we're confused is --
8 and I can't imagine this has been lost on the Court but they're
9 -- they filed a standing motion seeking standing to pursue
10 claims that they contend are colorable that are predicated on
11 insolvency of EPL in 2014 and 2015 and they're telling the
12 Court at the same time that we think they're grossly -- the
13 Debtors are grossly undervaluing this enterprise but at the
14 same time when we get to proposing an alternative plan, what we
15 intend to do is to use the Debtors' valuation for the purposes
16 of that plan or at least use the Debtors' valuation to pay one
17 group of creditors but not to pay ourselves.

18 And so, your Honor, I think what -- at the end of the
19 day, I think your Honor has suggested this. We need to get to
20 the confirmation hearing with respect to the only plan that is
21 appropriately before the Court and that's what we would urge
22 the Court to do, is to focus on getting us to confirmation of
23 that plan.

24 Now, obviously, whatever they want to do in the
25 background to negotiate, to prepare themselves in the

1 eventuality -- in the event that your Honor doesn't confirm the
2 plan, no issues with that but publicly announcing, debating
3 what the terms of their alternative plan are at this point in
4 time, we don't think that's appropriate. We don't think that's
5 what should be happening here and we think it was done entirely
6 strategically.

7 Presumably the primary motivation was to be able to
8 say these things to your Honor today. That's why they filed
9 their objection several weeks early and it wasn't directed at
10 disrupting the voting that's occurring now through September
11 6th when their objection is actually due but you haven't seen
12 many times that litigators have filed objections several weeks
13 before they're due in advance of a September 30th hearing. And
14 I wanted to make those points, your Honor.

15 And let me just briefly address the standing issue
16 because your Honor had made some comments about what may happen
17 at the conclusion of confirmation and there's -- and the EGC
18 bondholders, the White and Case represented group, makes the
19 continuous -- has this continuous mantra that they're the only
20 independent party that could possibly have standing to do this
21 and we made this point in our response to their standing
22 motion. That isn't the case.

23 To the extent that the Court doesn't confirm the plan
24 and if it doesn't confirm it for -- it agrees with the Debtors'
25 valuation but doesn't confirm it for some other reason, we have

1 a massive, massive deficiency claim -- we, the second lien
2 lenders on the EGC side. We have every incentive to protect
3 and preserve the value of that secured intercompany claim
4 against the EPL entities. We have a greater interest than they
5 do because their claims are simply smaller than ours on a
6 deficiency basis.

7 Moreover, I think if I understand their exclusivity
8 papers that were filed early properly, they're also working
9 with the EPL noteholders and trying to come up with an
10 alternative plan. It certainly doesn't sound to us like that
11 will ultimately be an unconflicted party but rather someone who
12 will strategically use a settlement of that intercompany claim
13 in an effort to try to confirm their plan.

14 And so when we get to that point -- the reason I
15 wanted to raise is your Honor had made comments about at the
16 conclusion of confirmation, I'll deal with that issue, the
17 standing issue --

18 **THE COURT:** Uh-huh.

19 **MR. LEBLANC:** -- as well because I'll hear evidence
20 about it. I didn't want the Court to lose the fact that if you
21 do deny confirmation of this plan, which we don't think you
22 will but if you do, we're also a party that should have
23 standing to deal with that claim and we have a greater interest
24 than the EGC stand-alone noteholders do and we would in that
25 circumstance be truly unconflicted at that point.

1 **THE COURT:** Well, in part, when I made those
2 comments, I was actually talking to you and I meant what I
3 said, is you need to have -- whatever your Plan B is, you need
4 to be ready to go. I wasn't just talking to the person at the
5 podium. I get it and can I go back to something that you said
6 earlier? I want to make sure that I'm not overlooking
7 something. Am I doing, in your mind, anything inconsistent
8 with getting to confirmation?

9 **MR. LEBLANC:** No -- you, your Honor, no --

10 **THE COURT:** Okay.

11 **MR. LEBLANC:** -- not at all.

12 **THE COURT:** All right. And I'll tell you, to the
13 extent that it was --

14 **MR. LEBLANC:** I will answer it just with respect to
15 the issue that was asked. No, you were not.

16 **THE COURT:** Understood. That's -- I can -- I have
17 more control over me than anyone else. So that's where I have
18 to leave that.

19 And I'll tell you, to the extent -- I mean, I -- you
20 know, I get strategic filings and I get standing up and to the
21 extent that it was directed to me, it had zero effect. I mean,
22 it just did. You know, folks who have known me just know once
23 I've decided on a course of action, I'm hard to change and, you
24 know, I'm going to do my best. I'm going to get to that date
25 and it's going to take some really, hopefully, acts that I

1 don't have to hear about and deal with to stop that process but
2 then I'm going to substantively evaluate where folks are and --
3 you know, again, it's -- my only goal is to get it right.
4 That's all.

5 **MR. LEBLANC:** No, and my point, your Honor, with the
6 strategic filing and -- we've put things in pleadings to try to
7 influence a judge before. I don't know that I've ever filed a
8 pleading three weeks before it's due for that purpose but I'd
9 have to really think about that one. But we do believe
10 exclusivity actually means something and there's an actual
11 solicitation happening at this moment in time and the idea of
12 putting forward alternative plan structures in the middle of
13 that process --

14 **THE COURT:** Yeah. If I were to find out that there
15 is a letter going out to folks who have a vote about saying,
16 hey, vote a particular way -- I know this would never be done.
17 So I'm comfortable giving the example but if there were a
18 communication going out saying, hey, don't vote this way on
19 this plan because we've got something better, you know,
20 everybody in the courtroom will see another side to me that a
21 few in here have seen but you just don't want to see that day.
22 I mean, that -- you know, that would not be a good day for
23 anybody. But I'm pretty comfortable that that just would not
24 occur.

25 **MR. LEBLANC:** We have no reason to believe that

1 letter exists. What we do know exists is the filing that they
2 made last week.

3 **THE COURT:** Yeah, I see that. That's -- you know,
4 again, to the extent that it was directed at me, it had zero
5 effect. To the extent that somebody else is going to read it
6 and be persuaded, you know, I can't comment on that. That's --
7 you could say that about any pleading that's been filed.

8 **MR. LEBLANC:** Well, you could say that about any
9 pleading but one where -- with the -- and I'll leave it at
10 this, your Honor. I think the specificity -- I think this is
11 what Mr. Myer was referring to earlier. I wanted to point out
12 the elements of the timing that your Honor may not have
13 appreciated, that it may have looked like that was being filed
14 because that was the deadline to file it and this was being
15 heard but, in fact, it wasn't and it -- the deadline for filing
16 that actually coincides with the voting deadline.

17 **THE COURT:** Got it. All right, no, I appreciate your
18 pointing that out.

19 **MR. LEBLANC:** And, your Honor, we'll have a couple of
20 issues -- we have a couple of discovery issues that are
21 discrete that we'll address. I think we still have disputes
22 that we'll address when the opportunity comes a little bit
23 later.

24 **THE COURT:** All right.

25 **MR. LEBLANC:** Thank you, your Honor.

1 **THE COURT:** Thank you.

2 Mr. Anker?

3 **MR. ANKER:** Your Honor, I'll -- I will do my darndest
4 to spend less than one minute at the podium right now. I rise
5 only for two things. One, I plead guilty. I file strategic
6 pleadings. I try to represent my clients. I've known
7 Mr. LeBlanc. He's a spectacularly good litigator. He does the
8 same. As you put it, no one's transparent.

9 **THE COURT:** Right.

10 **MR. ANKER:** I'm here to do the best for my client.
11 He's here to do the best for his client which brings me to my
12 second point. One thing I appreciate about your Honor is I
13 think, as you put it, you look at people's motivations and you
14 don't check your common sense at the door. I would leave you
15 with this thought on the big issue as you head toward a
16 confirmation.

17 Why is \$75 million being spent just for the estate
18 professionals? That doesn't include the EGC notes. It doesn't
19 include myself. Why are there three Milbank Tweed partners in
20 this room if this company is really worth as little as the
21 Debtor says it is? Actions speak louder for words -- than
22 words. Why have the company's executives negotiated so hard to
23 maximize equity, not cash, in a reorganized company? What does
24 that tell you from a common-sense standpoint?

25 Final point, what you will hear at confirmation and

1 when you look at the issues is that for this plan to be
2 confirmable as against the EPL notes, it has to both be true --
3 both be true that the intercompany note is a valid, secured
4 obligation so the first 325 million goes to EGC and that the
5 value of EPL be as low as they're suggesting because if the
6 value is higher, then even if that note is valid, we get all
7 the dollars after the intercompany. And so one of the answers
8 to Mr. LeBlanc is he needs to prevail on both positions. Thank
9 you, your Honor.

10 **THE COURT:** All right, thank you.

11 All right. Mr. Myer?

12 **MR. MEYER:** Thank you, your Honor. I'll be quick. I
13 think just one note as it relates to the exclusivity item. I
14 would note, as Mr. LeBlanc did not, I think it is slightly
15 heightened when you have a letter that we've agreed to include
16 as part of our solicitation package from the Creditors'
17 Committee encouraging unsecured creditors to vote to reject the
18 plan. I don't think that that can go unnoticed combined with
19 the detailed outlines that were included in their objection on
20 Friday, I think.

21 So I did want to mention that but I would just come
22 back to the fact that, again, a lot of the discussion you heard
23 is about alternatives.

24 **THE COURT:** So do you think that they've -- you think
25 that they've violated exclusivity?

1 **MR. MEYER:** I think that we're taking a hard look at
2 it, your Honor.

3 **THE COURT:** Okay. Well, that's -- you know what you
4 need to do.

5 **MR. MEYER:** Uh-huh.

6 **THE COURT:** I -- if you file the appropriate motion,
7 I'll set it for hearing and I'll get to the bottom of it and
8 try to make the best decision that I can. I -- it doesn't
9 scare me or bother me or it isn't something that I don't want
10 to do. If you file it, I'm more than happy to deal with it but
11 I'm not going to, you know, make comments and -- because
12 someone says something. I mean, if you think there's a
13 problem, I expect you to put it in a written motion, sign it
14 under 9011 and then I'll deal with it and figure out, you know,
15 what's right and what's wrong.

16 **MR. MEYER:** Understood, your Honor. Thank you.

17 **THE COURT:** Yeah, all right.

18 **MR. MEYER:** A couple of other quick points just in
19 the discussion of alternatives. I will come back again to it.
20 There was discussions about lines, about how there's going to
21 be this financing commitment. We as the Debtor, we've talked
22 with our boards about --

23 **THE COURT:** Yeah. You just don't have to -- you
24 don't have to respond. I -- you've got your date. You know,
25 you're either going to win, lose or you're going to compromise

1 you're way out of it. I mean, it's -- there are three defined
2 paths and I'm going to give you your shot. You know, you're
3 going to give advice to your clients. You're going to put
4 forth your best case that you can and you're going to try to
5 win. That's what you're here for.

6 I -- you know, I am not a baby splitter. I'm just
7 not. I believe that people ought to win and people ought to
8 lose. I just -- it's just what -- it's what makes the system
9 work. So that's -- I'm coming prepared for somebody to win and
10 somebody to lose. If you-all take that out of my hands, that's
11 a different thing but that's what I'm coming to do.

12 **MR. MEYER:** Understood, your Honor.

13 **THE COURT:** Uh-huh.

14 **MR. MEYER:** With that, I don't think I have any
15 additional comments. I would turn the podium over to my
16 colleague Jordan Leu to discuss some of the discovery disputes
17 that are -- I believe are still active between the parties.

18 **THE COURT:** All right, thank you.

19 **MR. LEU:** Thank you, your Honor. Jordan Leu for the
20 Debtors with Ms. Waller. I think we've worked out most of
21 this.

22 **THE COURT:** Okay.

23 **MR. LEU:** We just have a few discreet issues.

24 **(To Ms. Waller):** Do you want to start out with the
25 disputed issues or --

1 **MS. WALLER:** Sure. As he said, your Honor, we can
2 walk through the small number of disputed issues and I think in
3 lieu of an Order we would just note on the record the areas
4 that we have agreement to, so --

5 **THE COURT:** Okay.

6 **MS. WALLER:** -- you don't have to go through that in
7 the Order.

8 **THE COURT:** All right.

9 **MS. WALLER:** The first issue that we have disputed is
10 the matter of materials related to the valuation that the
11 Debtors' expert, PJT, and their valuation. I don't think I
12 have to tell anybody in this room how important valuation is to
13 this case. It is everything. And yesterday Mr. Laurinaitis,
14 the expert from PJT Partners, was deposed and through that
15 deposition, as well as the expert report that the Debtors have
16 served on the parties, there have been five matters that have
17 come to light that are very important in terms of understanding
18 Mr. Laurinaitis's valuation.

19 To take a step back, there are a couple of key
20 factors that really drive the valuation and can significantly
21 impact the valuation of this company. One of them is risk
22 adjustment factors that are applied to the Debtors' reserves.
23 Part of that is what is the source of where those risk factors
24 come from, what type of range did Mr. Laurinaitis use. We
25 understand that he looked to one particular report from 2014

1 for where he obtained those risk adjustment factors and we
2 would like to dig into that and understand the basis for that
3 versus what PJT and Mr. Laurinaitis has done in other
4 valuations. The difference in terms of the range that he is
5 looking to as well is very important, as well as the results.
6 So if you used two-year-old data, do you look at 2016?

7 There's a lot of different sources for risk
8 adjustment factors and a lot of questions that we have about
9 the ones that Mr. Laurinaitis has applied and we think it's
10 fair for us to be able to test those assumptions based on prior
11 engagements that Mr. Laurinaitis has been involved in, both in
12 personally valuing offshore assets himself. We understand he's
13 only been involved in two matters where he's valued offshore
14 assets. That's what we learned yesterday. And we'd like to
15 understand the methodology and obtain documents reflecting that
16 methodology so that we can test the assumptions that he has
17 used in this case.

18 **THE COURT:** All right. So you want documents that
19 Mr. Laurinaitis used in the course of other representations
20 with other clients. Is that what you're asking for?

21 **MS. WALLER:** Correct. There are three matters
22 where --

23 **THE COURT:** Did you give those folks notice of your
24 request?

25 **MS. WALLER:** We have not. We have asked the Debtors

1 for it and --

2 **THE COURT:** Okay, that request is denied. Next?

3 **MS. WALLER:** We also have asked for the working
4 papers of PJT and Opportune, and let me just give you some
5 background in terms of what that means. We're not asking for
6 drafts of their report. What we are asking for is the
7 materials that underlie their calculations in terms of
8 information that we understand they received from the Debtors
9 to the information that they put forward in their valuation.
10 And it's extremely complicated in terms of anything -- having
11 our own experts work through how do you get from Point A to
12 Point B and sitting down and trying to do that all through a
13 deposition is extremely tedious.

14 **THE COURT:** Sure. What is that? What are we looking
15 at? What is it specifically that you want? Have we identified
16 a set of documents that are being withheld? Are we not
17 looking? What -- I mean I hear what you're saying, I just
18 don't know what you're asking for.

19 **MS. WALLER:** Sure. We're looking for the bridge
20 between the company's information and how they have gotten to
21 what they put forth in their valuation, so the spreadsheets
22 that are imbedded in their report that will help us to
23 understand how did they get to those numbers.

24 **THE COURT:** Do you know what she's asking for?

25 **MR. LEU:** Not entirely, your Honor, but my position

1 on this is if you look at the report, it says he had this PV10
2 value, here's the risk, here's the conclusion, here are the
3 deductions, all the methodology is explained in the report.
4 During the deposition, that's when you should ask an expert how
5 do you get this number into this number. On the list of
6 documents reviewed, that's where you list these are the company
7 provided documents. And in every other case I've worked on
8 that's part of the job of the deposition, part of the job of
9 the opposing expert, part of the job of the law firm to figure
10 out how all that fits together. And what I've not seen is
11 experts being required to turn over what I would call draft
12 reports and internal work papers to do all that work for the
13 opposing side.

14 **THE COURT:** And so what did you do with respect to
15 this request to figure out what existed?

16 **MR. LEU:** I didn't understand this request until
17 today. You know, working papers.

18 **THE COURT:** All right. What I'm going to do, I'm
19 going to let -- because I -- and I'm not -- I'm trying to be as
20 open and as candid as I can possibly be. I don't have the
21 foggiest notion what you're asking for. It sounds like
22 Debtors' counsel doesn't know either. I'm going to let you all
23 talk about this and if there is a dispute I will get the two of
24 you back over here on an emergency basis. But what I really
25 want, what will help me, is I want a calculation of what went

1 into this number. I want anything having to do with this
2 assumption. How did you get there? I mean that will help me.
3 To the extent you can give me more specificity, the better I am
4 able to make a decision and also give you an Order that's
5 enforceable.

6 I mean if I sign an Order today that says you get
7 everything that's the bridge --

8 **MS. WALLER:** We're not going to do that, your Honor.

9 **THE COURT:** I mean I could never enforce that Order
10 because I don't know what it means.

11 But have that conversation. If you still have a
12 dispute, then let Mr. Alonzo know and I will get you both back
13 over here and we'll figure it out. Okay?

14 **MR. LEU:** Yes, your Honor.

15 **THE COURT:** All right?

16 **MS. WALLER:** We'll do that.

17 The second issue -- sorry, the third issue that we
18 have is with respect to depositions. So as your Honor knows,
19 this is an extremely tight schedule in terms of discovery.
20 We've been working together --

21 **THE COURT:** Sure.

22 **MS. WALLER:** -- in terms of --

23 **THE COURT:** Is this the seven hour issue or the
24 multiple appearance issue?

25 **MS. WALLER:** It is. There are three witnesses who we

1 would like to have additional time with. Mr. Laurinaitis, who
2 was deposed yesterday --

3 **THE COURT:** You got it. He's crucial. I want you to
4 be --

5 **MS. WALLER:** Thank you, your Honor.

6 **THE COURT:** -- reasonable, but you're going to get
7 some more time.

8 **MS. WALLER:** Mr. Chiller's deposition is tomorrow.
9 He is, as your Honor knows, the CEO of the companies. There's
10 a need for multiple 30(b)(6) topics for the Debtors, including
11 negotiations with the Second Lien for the RSA and the Plan.

12 **THE COURT:** And so what are you proposing?

13 **MS. WALLER:** What I propose to do is to have
14 Mr. Chiller available on a second day, if needed. Obviously,
15 the parties are going to work as hard as they can, and they
16 have been working hard together to try and streamline things,
17 but --

18 **THE COURT:** All right, I think that --

19 **MS. WALLER:** -- given that today was our
20 opportunity --

21 **THE COURT:** I think that given who he is and all of
22 his issues, I think that a second day is fair. If it goes --
23 but not beyond a second day.

24 **MS. WALLER:** Thank you.

25 **THE COURT:** Okay?

1 **MS. WALLER:** The third witness is Mr. Baggett, who is
2 the second of the Debtors' experts. He is from Opportune. He
3 is I believe providing a liquidation analysis. He's on
4 Thursday, your Honor. Again, we will do our best to try and
5 get it done in one day. Given that today was our shot to talk
6 to your Honor, we wanted to have the opportunity to ask for a
7 second day, if it is needed, based on our best efforts to
8 streamline things, that we have another opportunity.

9 **THE COURT:** No, you have it.

10 **MS. WALLER:** Thank you.

11 **THE COURT:** Okay.

12 **MS. WALLER:** I believe that that is the outstanding
13 disputes today. I think the one pending that we had before
14 your Honor at the previous discovery hearing is Mr. Chiller's
15 personal financial information. I believe that has already
16 been submitted to you in camera.

17 **THE COURT:** You guys have already gotten that back,
18 right?

19 **MR. LEU:** I believe we have the information back.

20 **THE COURT:** I thought that -- I will check on this.
21 I thought there was a list of what documents would be produced
22 and what wouldn't be. I know I created a list. So you guys
23 have never seen that --

24 **MR. LEU:** Don't believe we've seen that.

25 **THE COURT:** -- is what you're telling me.

1 **MS. WALLER:** I don't believe we have. We actually
2 don't have a list of what's been submitted. So if we could --

3 **THE COURT:** I will deal with that when I step down.
4 I went -- I've been through all of those and I created a list
5 of what I thought was appropriately private and what I thought
6 ought to be produced. And if that somehow got lost, my fault
7 and I'll fix that.

8 **MS. WALLER:** There are a lot of moving pieces,
9 your Honor. No problem.

10 And so then I can just tick through and Jordan can --
11 and Mr. Leu can, of course, jump in where anything I describe
12 (indiscernible) of the agreement that we've come to.

13 **THE COURT:** Sure.

14 **MS. WALLER:** So we've already discussed the expert
15 reports for PJT and Opportune. Mr. Leu has represented that
16 the investor presentations and press releases have been
17 identified and that has been relied upon by Mr. Laurinaitis.

18 Mr. Leu and I also came to an agreement in terms of
19 the business plan. They've noted the documents that have been
20 produced and were actually going to produce.

21 Mr. Leu also checked with the Opportune folks and the
22 current understanding is that they don't have any notes and
23 memos that are cited on Page 8 of the Opportune report, but
24 they are going to work, if there does appear to be some that
25 get identified later, they'll work with us in terms of

1 producing those.

2 **MR. LEU:** And just to make clear, I'm saying
3 specifically look for notes of these particular interviews that
4 are listed on Item 5, Docket 1117.

5 **THE COURT:** Got it.

6 **MS. WALLER:** The working papers we addressed with
7 your Honor, we will continue to address that.

8 In terms of the Debtor documents with starts on
9 Page 6 of the Debtors' Response in Docket 1117, the Debtors are
10 looking to located the reconciliation of the Aries database and
11 they'll get back to us on that.

12 The Debtors believe that they've already produced the
13 quarterly impairment testing by both the accounting group and
14 the auditors and they will work with us to help us identify
15 that in what's been produced.

16 The documents regarding an evaluation of potential
17 acquisitions sounds like is subject to our nondisclosure
18 agreement. They are going to check with the counterparties to
19 see if they are able to produce that.

20 The internal evaluations have been identified in the
21 Debtors' Response (indiscernible) we're going to -- I think
22 we'll take the time to confirm that that's the information
23 we're looking for and we'll confer with the Debtors, as needed.

24 The estimation of the unencumbered tort claims are
25 being in the process of looking for that information, whether

1 in the specific document that Mr. Foxmire [sic] identified or a
2 similar document, that essentially supports the value of the
3 unencumbered tort claims in the most recently filed Disclosure
4 Statement.

5 The documents related to the Debtors' insurance, we
6 have come to an agreement that the Debtors will help us to set
7 up some discussions with the company, including the insurance
8 professionals, to help understand the information that's being
9 targeted there.

10 **THE COURT:** All right.

11 **MS. WALLER:** The communications between the Debtors
12 and the OEM I believe have been --

13 **MR. LEU:** Yes.

14 **MS. WALLER:** -- resolved as well.

15 **MR. LEU:** That's resolved. My understanding is we're
16 going to look by people at the company to see if there are any
17 communications in writing relating to the statements made in
18 the Disclosure Statement about BOEM's position in the case.

19 **THE COURT:** All right.

20 **MS. WALLER:** The monthly financial statements and the
21 standalone financial statements on the next page have been
22 resolved in the Debtors' Response. And the parties -- the
23 Committee and the Debtors have agreed to continue to confer on
24 the board minutes and the Debtors are going to go back and take
25 a second look at the redactions and confirm the privilege for

1 each of the redactions based on the concerns that the Committee
2 has raised.

3 **THE COURT:** All right.

4 **MS. WALLER:** That is it, your Honor --

5 **THE COURT:** All right.

6 **MS. WALLER:** -- I believe.

7 **MR. LEU:** That's it, your Honor.

8 **THE COURT:** Is that the agreement?

9 **MS. WALLER:** That is the agreement. I believe there
10 are some Second Lien issues that I think other counsel will
11 cover.

12 **THE COURT:** Got it. Thank you.

13 **MS. WALLER:** Thank you.

14 **MR. STARNER:** Your Honor, may I approach the podium?

15 **THE COURT:** If you intend on speaking.

16 **MR. STARNER:** Very briefly, your Honor. Greg Starnier
17 of White & Case on behalf the EGC Ad Hoc Group. I've been
18 asked to speak for the objecting parties about a discreet
19 issue.

20 **THE COURT:** Okay.

21 **MR. STARNER:** I think we've teed this up for the
22 Court. What we're seeking is valuation-related information
23 from within the Second Lien Ad Hoc Group.

24 You know, Judge, this is an issue that's come up
25 rarely, but it has been addressed a few times. Some Courts

1 have expressed some skepticism about requiring creditors just
2 to produce valuation materials. But I think what we have here
3 is a somewhat unique circumstance. You know, this is an issue
4 where the Second Liens have been kind of the driving force
5 behind the RSA and the terms of the RSA that are imbedded into
6 the Plan. Valuation obviously is a critical issue. And this
7 is not an issue where we're seeking their opinion. The
8 evidence we're seeking doesn't necessarily go to establish
9 valuation. It really I think ties directly into what we've
10 heard from the Debtors' expert. He's articulated his approach
11 and methodologies he's applied is the way to approach
12 valuation. That's a critical issue that's going to be in
13 dispute at a confirmation hearing and we believe it would be
14 highly probative to see how highly sophisticated investors that
15 are the members of the Second Lien Group, how they look at this
16 valuation. Do they use the same type of assumptions? Do they
17 use the same type of approach? And I think that's probative
18 evidence as to whether or not how the Debtors have approached
19 this is consistent and also it also ties into whether or not
20 the Debtors in fact have employed the exact same methodologies
21 as, you know, the kind of key plan proponents here.

22 So that's kind of where our focus is, your Honor.
23 And I'll just finally end with the issues of confidentiality,
24 there's been some objection as this is proprietary information,
25 you know, frankly, if it is proprietary I find that

1 interesting, because the Debtors' expert has made it very clear
2 this is standard industry approach to valuation. And to the
3 extent that, you know, the economic (indiscernible) investors,
4 the Second Lien Group, are approaching it differently, you
5 know, that by itself would be I think relative and probative
6 here.

7 So we're actually very happy to work with the counsel
8 for the Second Lien as to burden and narrowly tailor and work
9 with them as to giving just the discreet information that we're
10 looking for here on these valuation assumptions and how they
11 approached valuation, your Honor.

12 **THE COURT:** All right. Thank you.

13 **MR. LEBLANC:** Your Honor, again Andrew LeBlanc of
14 Milbank Tweed on behalf of the Second Lienholders. A couple of
15 points, your Honor. And Mr. Starner had suggested this is an
16 issue that comes up he said infrequently, I actually think that
17 three of us in this courtroom have argued this and the Judges
18 in those cases all came out the same way and precluded this
19 information.

20 And just -- but to step back one step, just to give
21 you some context to this, your Honor. We were served document
22 requests on the 25th of July. We had a -- we scheduled a meet
23 and confer session on the 26th. We took this position. We --
24 at the request of the requesting parties, we sent them the
25 authority for this position, which is the same documents, same

1 citations that are included in our papers. We had more meet
2 and confer sessions over the course of the next several days.

3 And the predicate for this in the cases that both
4 I've litigated and the other of my colleagues here who have
5 litigated it, including Mr. Starner and Mr. Anker, the
6 predicate for this is if a party is not putting on their own
7 valuation testimony, even through the form of their retained
8 expert --

9 **THE COURT:** It doesn't matter what you think.

10 **MR. LEBLANC:** I'm sorry, your Honor?

11 **THE COURT:** It's -- the ultimate conclusion is if
12 you're not putting on evidence it doesn't matter what you
13 think.

14 **MR. LEBLANC:** It does. And there's a variety of
15 reasons for that. It's not relevant. And you just think about
16 a transaction. Necessarily if somebody's purchasing a bond in
17 the open market, they think it's going to increase in value.
18 You also have a person selling that bond in the open market,
19 they think it's going to decrease in value. And I think this
20 is probably the -- the closest example is the Genco decision,
21 your Honor, where Judge Lane in that case, we were the ones
22 arguing this, looked at this and said I'm not going to have a
23 series of mini trials and then require evidence from every
24 layperson out there, because presumably it's going to be all
25 over the map because you have sellers and you have buyers and

1 people have different views as to valuation.

2 And so for those reasons, your Honor, we think it's
3 irrelevant, it's inappropriate, it's admissibility would be
4 constricted by Rule 701, but we also think it's irrelevant
5 because it can't possibly be probative on the value of the
6 company, particularly where we have -- and this was a
7 concession. We had a discussion with everybody and there was a
8 back and forth on a lot of things and we were asked are you
9 putting Houlihan on to testify as to value and we said we don't
10 intend to at this time, if that changes we will tell you. We
11 don't intend to.

12 And so we thought this was resolved the first time we
13 heard about it. We produced documents. We were open and
14 notorious that we were excluding this information because we
15 redacted with a label that said internal valuation in our
16 productions. And what -- and we produced our documents from
17 the 9th through the 12th of August and the first we heard of
18 this was Sunday that this was still an open issue. We thought
19 this had been resolved. To the extent that it hasn't, that's
20 fine. We're not saying that they've waived the argument. But
21 we are suggesting, your Honor, that you should follow the
22 decisions that we've cited in our pleadings and conclude that
23 this information doesn't have to be produced.

24 **THE COURT:** All right.

25 **MR. STARNER:** I'll just say, your Honor, in terms of

1 the timing issue, this is something we've always been focused
2 on. We just got the last of their documents on the 18th, so we
3 certainly have been trying to tee it up in a consolidated
4 fashion along with the other discovery disputes for this status
5 conference.

6 I will say regarding the other cases where this has
7 been raised, Mr. Anker and I both raised this in front of
8 Judge Sontchi in Delaware, two different motions. I lost mine
9 on more of a procedural timing issue as premature. And I would
10 distinguish Judge Sontchi's ruling in the other matter because
11 there it was a question of solvency in the context of a
12 (indiscernible) dispute. So I think very distinguished with
13 what we have here.

14 And really what we have here is not necessarily an
15 issue about whether the Second Liens are going to put forward a
16 valuation of their own. The question is do we have an
17 opportunity to test how the Debtors' approach, how they
18 approached valuation. Is it consistent with how other relevant
19 kind of market makers are approaching valuation? And I would
20 suggest to the Court that probative value can be found or
21 probative evidence would be in the files of the Second Liens,
22 the ones who are effectively working closely with the Debtors
23 and having kind of oversight, how they approached valuation.
24 If it's wildly different in the way the Second Liens approached
25 valuation, I think that would be critical and very relevant to

1 how this Court would consider the Debtors' valuation.

2 **THE COURT:** Thank you.

3 Mr. Rothberg, do you want to weigh in?

4 **MR. ROTHBERG:** Yes, your Honor. Ed Rothberg for the
5 Equity Committee. And I have with me Ms. Brown and also our
6 chairperson.

7 And I would say that it seems -- when I saw this
8 fight come up, it seems to me to be one of the most
9 extraordinary things I've ever seen. How could it possibly be
10 that the evidence of a lender, this is a lender, a secured
11 lender, of what they think the value is is not admissible when
12 they're coming into the Court and asserting that they're an
13 undersecured creditor. How could it possibly be that it's not
14 relevant? I can think of one exception: consulting expert.
15 But what -- I have not seen one iota of authority for a secured
16 lender in a case who's asserting affirmatively that they are
17 undersecured --

18 **THE COURT:** But they're not asserting that in the
19 context of confirmation.

20 **MR. ROTHBERG:** Absolutely they are, your Honor. They
21 asserted it --

22 **THE COURT:** They have zero burden.

23 **MR. ROTHBERG:** They asserted it in the motion to
24 oppose the appointment of the Equity Committee and --

25 **THE COURT:** Which has nothing to do with

1 confirmation.

2 **MR. ROTHBERG:** Well, your Honor, Mr. LeBlanc came up
3 to me in this hearing today and said they have a huge
4 undersecured deficiency claim.

5 **THE COURT:** Which has to be dealt with if the Plan
6 fails. I get it, I --

7 **MR. ROTHBERG:** Well, your Honor, point me, somebody,
8 to some ruling. In the hundreds of debtor cases that I have
9 handled over 36 years, in virtually every single one if there's
10 a dispute about value I subpoena the appraisal testimony, I
11 subpoena the bank records to get their understanding of what
12 the value is, I've never had a problem getting that. And so it
13 seems extremely extraordinary to me today that in a case where
14 the key issue is value we are not to be able to learn what the
15 beneficiaries of this Plan are asking the Court to give them to
16 what they think the value is. It's an extraordinary concept.

17 **THE COURT:** But they're not asking.

18 **MR. ROTHBERG:** They absolutely are asking,
19 your Honor. They are asking the Court --

20 **THE COURT:** All right --

21 **MR. ROTHBERG:** -- to swap their --

22 **THE COURT:** Then --

23 **MR. ROTHBERG:** -- their debt for equity.

24 **THE COURT:** Then let me rephrase that. In this
25 courtroom today they're not asking. The Debtor is asking. And

1 I will respectfully disagree and I don't think it's appropriate
2 for you to tell me what it is that's going on in my courtroom.

3 **MR. ROTHBERG:** Well, your Honor, maybe you haven't
4 been in the trenches in this case, but I can tell you they are
5 advocating --

6 **THE COURT:** Thank you, Mr. Rothberg.

7 Mr. Anker?

8 **MR. ANKER:** Your Honor, I rise only to draw one
9 distinction, just to make sure we're on the same page. And
10 Mr. LeBlanc's recitation is accurate. I litigated this issue
11 in another case on the side of asking for the valuation
12 testimony and had it denied. And that's one reason I didn't
13 rise at the beginning and I haven't pressed this issue. So I'm
14 not going to argue with Mr. LeBlanc.

15 What I understand we're talking about today is
16 whether documents that may or may not exist within the Second
17 Lien Ad Hoc Group about what they think the Reorganized Debtor
18 will be worth if this Plan gets confirmed, whether those need
19 to be produced. And I appreciate both the case law that is
20 existing today and the discussions we had with Milbank, which
21 have been productive and very professional.

22 I don't think what we're talking about, and I just
23 want to make sure I'm right about this, is historical
24 documents, for example, with respect to the negotiation end of
25 the Second Lien facility back in 2014. If in that historical

1 context, whereas we've talked about the intercompany notes and
2 the history here matter, if in that context there are documents
3 where, you know, any lender is going to be talking about what
4 the collaterals were, if -- I don't think we're having a
5 dispute about that historical stuff and I rise only to make
6 sure I'm right about that. If I'm right about that, I'm
7 content and I sit down. I don't think anyone's arguing that
8 historical set of materials, to the extent it exists, are not
9 producible.

10 **MR. LEBLANC:** Your Honor, I don't think there's a
11 disagreement about that. I don't know if there are any
12 documents that are responsive to that. There's obviously
13 been -- not all of my clients are original lenders here. But
14 that's not the issue that we're dealing with on this and it's
15 not -- frankly, it's not the issue that was dealt with in Genco
16 and EFH and the case before Judge Shannon and Molycorp, which I
17 just recently argued in front of Judge Sontchi. It's the issue
18 that Mr. Anker thought it was.

19 **THE COURT:** Got it.

20 **MR. ANKER:** (Indiscernible)

21 **THE COURT:** Thank you.

22 **MR. STARNER:** And just one last point, your Honor. I
23 will just note, you know, we're not focused or looking for -- I
24 know that a lot of these funds have a lot of internal modeling
25 they do focused on IR and return on investments and modeling.

1 That's not what we're focused on here. We're looking at, I
2 think as Mr. Anker articulated, what the value, what the
3 anticipated value of this company will be coming out of
4 bankruptcy and the focus really is their methodologies and the
5 assumptions that apply and whether it's consistent or
6 inconsistent with how the Debtors expert approached this and
7 his statement that that's standard, the way they do it.

8 **THE COURT:** Fair enough. I agree with the Second
9 Lienholders. This can't be -- this just can't be possibly
10 relevant to the Debtors' thought process and the Debtors'
11 valuation, their methodologies. It is simply too far removed,
12 too invasive. I'm going to sustain the objection. All right?

13 **MR. LEBLANC:** Thank you, your Honor. We have one --
14 I'm now trading opponents. The final issue, your Honor,
15 relates to depositions. We have -- in the course of those meet
16 and confers it was clearly identified to us that there are two
17 holders that they wanted to take, so we had those -- we haven't
18 had schedules for those, because those, they're going to be
19 backdated and back loaded, but we focused on that. And what
20 we've told them throughout is if there's a reason you need
21 additional depositions, just tell us what that reason is and
22 we'll consider it. We've now got to a point, and we outlined
23 this in our paper, that they've said we want all five of your
24 Committee members, we'll limit it to a half day. And our
25 response to that was why do you need all of them? We haven't,

1 frankly, gotten a response to that.

2 We understand there's been some discussion about
3 limiting that, but then there's other components to that so I
4 won't go into it, but the issue here, your Honor, is just one
5 of burden, relevance, duplication of efforts. There's five
6 Committee members. We don't know why all five of them need to
7 be deposed. We've asked the question and haven't gotten an
8 answer to it.

9 **THE COURT:** So you've offered two.

10 **MR. LEBLANC:** We've offered two and we would
11 consent -- they've asked -- they've identified a third that we
12 I think would be prepared to consent to that as well. The
13 issue, and we've pointed -- and your Honor knows this better
14 than I do, but a half day deposition takes no less preparation
15 than a full day deposition. And so if next week we're going to
16 be doing a deposition with each of our clients, that means
17 we're doing a full day of preparation, because they're not --
18 these aren't 30(b)(6) witnesses, so there's not a topic that we
19 can point to. We've asked them if they could -- if they want
20 to just authenticate documents through witnesses, that we could
21 have a discussion about that if they tell us what documents.
22 And if they want to have a deposition just to do that, we don't
23 have to spend a day prepping. But we haven't been able to come
24 to a conclusion.

25 So we would ask that the Court just limit them to

1 three depositions. We've always offered two and if they want
2 to identify a third, we'll do that even without them
3 articulating a basis for doing so.

4 **THE COURT:** All right.

5 **MR. MANTHEY:** Your Honor, let me first say we're
6 dealing with five members of the Ad Hoc Committee, each owed
7 over a hundred million dollars. We served document requests
8 upon them and we did several meet and confers. As a result of
9 those meet and confers -- first we were told we were going
10 to -- look, we're going to have to produce 40,000, 50,000
11 pages, each one of our members, it's impossible, we can't do
12 this. So what we did in those meet and confers is we tailored
13 it down and worked and worked hard to tailor it down. We
14 agreed that, okay, these search terms, let's go forward with
15 them. We saw on average from 500, or at a range 500 pages to
16 2500 pages for each of these noteholders. We didn't see the
17 thousands and thousands of documents in the extreme burden that
18 the Second Lienholders, who are ending up with 99 percent of
19 the equity in this company, went through to do this document
20 production.

21 After we got the document production, we went through
22 those documents for each of the five members. In each of those
23 productions there are interesting documents that we think are
24 appropriate to ask those individuals about.

25 **THE COURT:** Okay.

1 **MR. MANTHEY:** They offered, correct, two of the
2 members a few weeks ago, dates in Los Angeles and
3 San Francisco. We said we would like dates for each of the
4 others, given this calendar we're working with, we'd like to
5 figure out how to overlay. No, we're not giving you dates on
6 the other three deponents. I said, well, we haven't reviewed
7 the documents in full, but when we review the documents it
8 would be helpful just to have dates so we can agree.

9 We finally made the request. All the objecting
10 parties got together and said, look, we're willing to cut
11 Houlihan loose. We're not going to depose Houlihan. You have
12 represented you're not putting him on for valuation. But we
13 would like to depose each of the five individual members. We
14 will limit it to a half a day. We'll do the depositions in
15 California via videoconference. We did everything we could to
16 try to make this workable for, again, the Second Lienholders
17 who are ending up with 99 percent of the company.

18 **THE COURT:** What's the topic?

19 **MR. MANTHEY:** The topics are the documents.
20 Your Honor, I'm under a Protective Order and I'll tell you, you
21 were on one of the issues that are central to this case, good
22 faith. I think the documents show -- and let me, before I get
23 there. Where we ended up was we agreed that we'd do three of
24 the members, and I can name them, but we agreed to do three of
25 those members, and the other two, as long as they agreed that

1 the documents were authentic and admissible, subject to their
2 reservation of the relevancy of the documents, we would forego
3 the other two depositions. They would not agree to that.

4 So, your Honor, what we would offer is, we're under a
5 Protective Order, we see these documents as to the two holders
6 they have refused to produce, I'd offer to produce those
7 documents to your Honor for review in camera and if your Honor
8 believes we're entitled to a deposition, we'll have a
9 deposition. If they're not, you don't think they rise to the
10 level for us to do that deposition, then we'll respect your
11 ruling and move forward with the other three deponents.

12 **THE COURT:** So let me ask this. So you've gotten a
13 folder of documents.

14 **MR. MANTHEY:** Correct.

15 **THE COURT:** And is the intent of the depos to just go
16 through and authenticate them or is it substantive questioning
17 about certain documents?

18 **MR. MANTHEY:** There is substantive questioning.
19 Your Honor, you'll see from the documents --

20 **THE COURT:** Now, with respect to the other two,
21 you're willing to let them go if they will agree to
22 authenticity and admissibility.

23 **MR. MANTHEY:** Correct.

24 **THE COURT:** So at least those two couldn't have been
25 substantive.

1 **MR. MANTHEY:** Well, there's emails in there and
2 documents in there that we do want to bring to your Honor, but
3 we respect the fact that, you know, we have time constraints
4 here. Our preference is to depose all five, but given, in the
5 spirit of trying to work through this issue, we agreed that we
6 would do the three. But again, your Honor, we'd love to submit
7 the emails and documents to you to review in camera and you can
8 make a decision if we're on base or off base.

9 You'll see that the documents among the Second Lien
10 Lenders will show that the Second Lienholders were heavily
11 involved directly with the company involving the negotiation of
12 the RSA and the MIP, that the Second Lienholders have other
13 plans for these assets. And again, I'm hesitant to go much
14 further because I'm under a Protective Order.

15 **THE COURT:** No, I don't want you to. So your scope
16 of the inquiry runs to the negotiation of the deal that's
17 embodied in the Plan?

18 **MR. MANTHEY:** As well as the plans for these assets.

19 **THE COURT:** And why is that going to be relevant to
20 confirmation?

21 **MR. MANTHEY:** It's relevant to confirmation in terms
22 of the value. One of the arguments is that these assets have
23 not been subject to market and the evidence will show through
24 these lienholders that there are parties interested in
25 potentially buying the assets.

1 **THE COURT:** Okay.

2 **MR. LEBLANC:** May I be heard, your Honor?

3 **THE COURT:** Please.

4 **MR. LEBLANC:** So the proposal you just heard,
5 your Honor, I have not heard that before. Last night there was
6 communication between Mr. Manthey and my partner, who's here in
7 the courtroom, Mr. Renenger, who is in town for a deposition
8 yesterday, which is why he's here today in the courtroom,
9 your Honor. There were conversations between the two of them
10 where the concept of we'll limit it to three and then you agree
11 to -- we have no issue with authenticity, not an issue -- to
12 admissibility of any other documents that are in your
13 production. We've made the point to them that not all
14 documents are admissible simply because they've been produced
15 by us. For example, if there was a third party communication.

16 **THE COURT:** I also don't know what good it's going to
17 do if you agree to admissibility and no one else agrees to that
18 as well, but --

19 **MR. LEBLANC:** And so --

20 **THE COURT:** -- I got it.

21 **MR. LEBLANC:** -- we didn't -- our view, your Honor,
22 was that simply wasn't a workable solution. They're not
23 necessarily business records. They may be, but they may not
24 be. And so we said we can't agree to what you suggested.

25 What we've offered to them is, and I would make the

1 same proposal, rather than showing them to your Honor
2 in camera, show them to us and we will tell you if we agree --
3 if we have any issue with their being admissible. And then,
4 obviously, other parties would have a view on that as well.
5 But we thought that was a better solution to this. We also
6 said if you want to do -- if we can't say that they're
7 admissible but you want to do a deposition just to admit a
8 document, that can be a very short deposition. Or if you want
9 to do some of these depositions solely for that purpose that
10 are not substantive, then I don't have to prepare these
11 witnesses as though they're going to be deposed for three and a
12 half hours on any topic imaginable.

13 We've tried to come to a workable solution,
14 your Honor. I think -- they have not yet articulated to us why
15 the other two that aren't being -- that are subject to this
16 proposal, what relevance their documents or their testimony
17 would possibly have. We've asked that question, we haven't
18 gotten an answer to it. So we object on that basis,
19 your Honor.

20 **MR. MANTHEY:** Your Honor, I guess the response is I
21 don't really necessarily feel sorry for the Second Lien Lenders
22 having to sit through a half day deposition, given the stakes
23 here. There is elimination of all funded debt that is trying
24 to be done and the beneficiary of that is the Second Lien
25 Lenders. We limited the scope of the documents significantly

1 from, again, the 40,000 that we were supposed to be produced
2 to, again, 500 to 2500, which include numerous duplicates.
3 Quite frankly, a subject area for those depositions is whether
4 we've been produced -- whether all the documents responsive
5 have been produced.

6 So we don't think it's extreme hardship, given the
7 stakes, and we would ask that we conduct the five depositions
8 or conduct the three depositions and present the documents to
9 your Honor in camera and you can make the decision whether it's
10 appropriate for us to depose those two individuals.

11 **THE COURT:** All right.

12 **MR. LEBLANC:** Your Honor, can I respond just to the
13 document production issue?

14 **THE COURT:** Sure.

15 **MR. LEBLANC:** There's not a 30(b)(6) request for a
16 document custodian or someone involved in the production of
17 documents. They're going to be asking -- we would present --
18 they've asked for one individual among the group, but otherwise
19 they've allowed us to choose which of the business people at
20 these institutions would testify. So if their purpose is to
21 ask them what steps did you take to do production, they're not
22 going to get it, unless they want to serve a 30(b)(6), which I
23 don't think they could do at this time.

24 But more importantly, Mr. Manthey is talking about
25 the difference between 40,000 per client and a much smaller

1 number. And in candor, your Honor, we did it, and this was
2 agreed by everybody, we ran it through a sample, one of the
3 firm's information, and we extrapolated from that. That's the
4 difference between their initial set of search terms and the
5 last set of agreed search terms. They proposed to us a set of
6 search terms. We gave them the information to show what it
7 would return and we talked about burden. We then negotiated a
8 new set of search terms that yielded a different number of
9 documents. It is completely unremarkable -- well, this was an
10 agreed set of search terms, your Honor.

11 And so I don't need Mr. Manthey to feel sorry for me.
12 That's not what I'm looking for. All I'm looking for,
13 your Honor, is your Honor's decision on whether or not it is
14 appropriate for them to require, without any articulation of
15 relevance, depositions of five different institutions, even if
16 for only half a day, where the burden on us to prepare them is
17 completely unmoved by limiting it to three and a half hours.

18 **THE COURT:** Fair enough. Let me tell you what I'm
19 going to do and part of it -- I haven't gotten a good sense of
20 what the purpose of these depositions is either. I'm also
21 unwilling to conclude that I ought to not have them based upon
22 a reluctance or an inability to tell me why. So here's what
23 I'm going to do.

24 Mr. Manthey, you have ten hours. You allocate it
25 however you want.

1 **MR. MANTHEY:** Okay.

2 **THE COURT:** You can take two hours apiece, you can
3 take one five hours, but you have ten hours total. And I'll
4 leave it to you all to work out the appearances and whatever it
5 is that you decide that you want to do with those folks. All
6 right?

7 **MR. MANTHEY:** Thank you, your Honor.

8 **THE COURT:** Okay. What else?

9 **MR. LEBLANC:** I think those are my only issues,
10 your Honor.

11 **THE COURT:** All right, thank you.

12 **MR. LEBLANC:** Unless somebody tells me otherwise.

13 **THE COURT:** Anyone else?

14 All right.

15 **MR. MEYER:** I think we have, your Honor, two
16 additional items on the agenda today. I anticipate they should
17 move more quickly than the ones we've had so far.

18 The first, your Honor, is a motion seeking approval
19 of a stipulation to provide adequate protection for Prosperity
20 Bank. Your Honor, Mr. Rothberg filed an objection to this
21 pleading. We've been in discussions with the Equity Committee.
22 They would like to adjourn our motion further. Prosperity, as
23 of the time before this hearing, was objecting to that. We do
24 not intend to go forward with this motion today, your Honor,
25 and I'll cede the podium to Prosperity's counsel to the extent

1 that they're still objecting to that position.

2 **THE COURT:** All right. Thank you.

3 **MR. SWONKE:** Good afternoon, your Honor. Adam Swonke
4 for Prosperity Bank. S-w-o-n-k-e.

5 The stip -- the agreed stipulation that was filed was
6 the result of a lift stay motion -- negotiations resulting from
7 a lift stay motion that was filed back in June.

8 **THE COURT:** Okay.

9 **MR. SWONKE:** As the other agreed party to the Order
10 that was submitted, we'd like to go forward with the hearing
11 today.

12 **THE COURT:** All right. And did you file your witness
13 and exhibit list?

14 **MR. SWONKE:** I'm sorry?

15 **THE COURT:** Did you file your witness and exhibit
16 list?

17 **MR. SWONKE:** I did not, your Honor.

18 **THE COURT:** It's going to be awfully difficult for
19 you to proceed ahead without any witnesses or exhibits, isn't
20 it?

21 **MR. SWONKE:** I'm not sure that I need any -- it was
22 agreed until -- well, it's still agreed.

23 **THE COURT:** You've got to prove it up. Just because
24 something's agreed doesn't mean that I just sign it. I have an
25 objection, so you've got a burden, correct? And how do we meet

1 our burden?

2 **MR. SWONKE:** Well, the objection isn't to the
3 position Prosperity has taken. The objection is to, I believe,
4 a position that the Debtors are taking.

5 **THE COURT:** Okay. So you'd like to proceed?

6 **MR. SWONKE:** We're just looking for adequate
7 protection payments and your signature on the Order that was
8 submitted at Docket Number 917.

9 **THE COURT:** Okay. Is that your case?

10 **MR. SWONKE:** I suppose so.

11 **THE COURT:** The Order is denied.

12 **MR. SWONKE:** Yes, sir.

13 **THE COURT:** A really bad decision. I mean you just
14 took something that you could kick down the road and now you
15 have a definitive ruling. The request has been denied. There
16 will be no adequate protection.

17 That was a really bad decision. You've got to learn
18 to read the room. I mean there isn't -- you could see that one
19 coming a mile away.

20 All right, what's next?

21 **MR. SWONKE:** May I be excused?

22 **THE COURT:** Yes, sir.

23 **MR. MEYER:** Your Honor, one more item on the agenda
24 and I'll turn the podium to my colleague, Jessica Pete, to
25 cover the contract rejection motion.

1 **THE COURT:** Thank you.

2 **MS. PETE:** Good afternoon, your Honor.

3 **THE COURT:** Good afternoon.

4 **MS. PETE:** Jessica Pete for the Debtors.

5 **THE COURT:** Will that not bend down any further?

6 **MS. PETE:** I wasn't going to try it again.

7 **THE COURT:** All right.

8 **MS. PETE:** I thought I'd just speak up.

9 Thank you, Mr. Anker.

10 All right (indiscernible)

11 **(Laughter)**

12 **THE COURT:** He didn't get it, either.

13 **MS. PETE:** We filed a motion to reject a couple of
14 operational contracts on July 26th. The objection deadline was
15 August 16th. We received no formal objections filed on the
16 docket. We did receive an informal response from Archrock's
17 counsel. For that reason, we agreed to some modified language
18 that just clarifies which of their contracts are not being
19 rejected pursuant to this Order.

20 **THE COURT:** All right.

21 **MS. PETE:** We have no issue with that. They've
22 agreed to the Order that we submitted and filed yesterday at
23 Docket Number 1091. And --

24 **THE COURT:** So that's got the additional language in
25 it?

1 **MS. PETE:** Yes, your Honor, it does. And I believe
2 we uploaded to the Court a redline as well that just shows --
3 it's Paragraph 4, the part -- ah, we did not upload a redline,
4 but we do have hard copies if you are interested.

5 **THE COURT:** You're saying it's all in Paragraph 4?

6 **MS. PETE:** Correct. Where it says "For the avoidance
7 of doubt, we do not reject...", yes.

8 **THE COURT:** All right. And Archrock has reviewed and
9 approved --

10 **MS. PETE:** They have.

11 **THE COURT:** -- the exceptions? All right.

12 Anyone else wish to be heard?

13 **(No audible response)**

14 All right. Based on those representations, I will
15 grant the motion. I have signed the Order that was uploaded at
16 Docket Number 1091. It's been signed, it's on its way to
17 docketing.

18 **MS. PETE:** Thanks very much, your Honor.

19 **THE COURT:** Thank you.

20 Anything else?

21 **MR. MEYER:** I don't believe so, your Honor. Thank
22 you for your patience today --

23 **THE COURT:** All right.

24 **MR. MEYER:** -- and I do not believe we have anything
25 else for today.

1 **THE COURT:** Anything else I can do to help the
2 process. All right. Safe travels home, everybody. We'll be
3 adjourned.

4 **(Counsel thank the Court)**

5 **THE MARSHAL:** All rise.

6 **(This proceeding was adjourned at 1:41 p.m.)**
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



August 25, 2016

TONI HUDSON, TRANSCRIBER